

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



2001

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CHAPTER 195

AN ACT concerning penalties for domestic violence offenses and supplementing Title 2C of the New Jersey Statutes and Title 30 of the Revised Statutes.

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

C.2C:25-29.1 Civil penalty for certain domestic violence offenders.

1. In addition to any other disposition, any person found by the court in a final hearing pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29) to have committed an act of domestic violence shall be ordered by the court to pay a civil penalty of at least \$50, but not to exceed \$500. In imposing this civil penalty, the court shall take into consideration the nature and degree of injury suffered by the victim. The court may waive the penalty in cases of extreme financial hardship.

C.2C:25-29.2 Collection, distribution of civil penalties collected.

2. All civil penalties imposed pursuant to section 1 of P.L.2001, c.195 (C.2C:25-29.1) shall be collected as provided by the Rules of Court. All moneys collected shall be forwarded to the Domestic Violence Victims' Fund established pursuant to section 3 of P.L.2001, c.195 (C.30:14-15).

C.30:14-15 "Domestic Violence Victims" Fund."

3. a. There is hereby established the "Domestic Violence Victims' Fund," a dedicated fund within the General Fund and administered by the Division of Youth and Family Services in the Department of Human Services. The fund shall be the depository of moneys realized from the civil penalty imposed pursuant to section 1 of P.L.2001, c.195 (C.2C:25-29.1) and any other moneys made available for the purposes of the fund.

b. All moneys deposited in the "Domestic Violence Victims' Fund" shall be used for direct services to victims of domestic violence, including, but not limited to, shelter services, legal advocacy services and legal assistance services, and for related administrative costs of the Division of Youth and Family Services.

C.2C:25-29.3 Rules of Court.

4. The Supreme Court may promulgate Rules of Court to effectuate the purposes of this act.

C.30:14-16 Rules, regulations.

5. The Department of Human Services may promulgate rules and regulations to effectuate the purposes of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

6. This act shall take effect on the 180th day following enactment, except for sections 4 and 5 which shall take effect immediately.

Approved August 2, 2001.

CHAPTER 196

AN ACT establishing a breast cancer public awareness campaign in the Department of Health and Senior Services, supplementing P.L.1999, c.361 (C.26:2W-1 et seq.)and making an appropriation.

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

C.26:2W-3 Breast cancer public awareness campaign.

1. a. The Commissioner of Health and Senior Services shall establish a breast cancer public awareness campaign, as a component of the Cancer Awareness, Education and Research Program established pursuant to P.L.1999, c.361 (C.26:2W-1 et seq.), to promote awareness and outreach throughout the State in regard to breast cancer screening services. The public awareness campaign shall be established in accordance with accepted public health practice and recommendations of the federal Centers for Disease Control and Prevention, and within the limits of funds appropriated pursuant to this act and any other resources available for the purposes thereof.

b. For the purposes of this act, the commissioner shall, at a minimum:

(1) develop and implement a Statewide plan to promote public awareness among members of the public, community-based organizations and health care providers, and encourage more referrals to breast cancer screening services;

(2) distribute promotional incentives for free or discounted items to be provided to women by local retail businesses that will encourage them to undergo mammography and become educated about breast cancer;

(3) provide for the use of public service announcements and printed materials in both English and Spanish;

(4) seek to disseminate information through a variety of entities, including, but not limited to, primary care sites, health care facilities, local health departments and clinics, county offices on the aging, pharmacies, libraries, YWCAs and YMCAs, senior centers, houses of worship, programs that serve victims of domestic violence, other community-based outreach programs and organizations, and the Internet;

(5) consult and seek to collaborate with at least the following entities to effectuate the public awareness campaign: the New Jersey Primary Care Association, the American Cancer Society, the Medical Society of New Jersey, the New Jersey Hospital Association, Planned Parenthood, AARP, the New Jersey Advisory Commission on the Status of Women, the New Jersey State Commission on Cancer Research, The Cancer Institute of New Jersey, the New Jersey Pharmacists Association, the Health Research and Educational Trust of New Jersey, and The Peer Review Organization of New Jersey, Inc.;

(6) establish and publicize the availability of a toll-free telephone number operated by the Department of Health and Senior Services to provide information and referral to members of the general public about breast screening services, with particular emphasis on facilitating free and reduced charge screening for low-income and uninsured women; and

(7) seek to secure the use of such funds or other resources from private nonprofit or for-profit sources or the federal government to effectuate the purposes of this act as may be available therefor, which shall be used to supplement and shall not supplant State funds used to carry out the purposes of this act.

2. There is appropriated \$90,000 from the General Fund to the Department of Health and Senior Services to effectuate the purposes of this act.

3. This act shall take effect immediately.

Approved August 2, 2001.

CHAPTER 197

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, 2001 and regulating the disbursement thereof," approved June 30, 2000 (P.L.2000, c.53).

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.2000, c.53, there is appropriated out of the General Fund the following sum for the purpose specified:

46 DEPARTMENT OF HEALTH AND SENIOR SERVICES
20 Physical and Mental Health
21 Health Services
GRANTS-IN-AID

03-4230 Public Health Protection Services: \$75,000
Grants-in-Aid:
03 Health Research and Educational
Trust of New Jersey - Breast Cancer
Awareness Project (\$75,000)

2. This act shall take effect immediately.

Approved August 2, 2001.

CHAPTER 198

AN ACT concerning horse racing, amending P.L.1992, c.19 and supplementing P.L.1940, c.17 (C.5:5-22 et seq.).

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

1. Section 5 of P.L.1992, c.19 (C.5:12-195) is amended to read as follows:

C.5:12-195 Application to conduct casino simulcasting, conditions of approval.

5. A permit holder which wishes to conduct casino simulcasting shall request the approval of the New Jersey Racing Commission in its annual application for horse race meeting dates filed with that commission pursuant to section 23 of P.L.1940, c.17 (C.5:5-43), or, if applying between the submittal of annual applications, through such supplemental application as that commission shall deem appropriate. The New Jersey Racing Commission shall not approve the request of any permit holder to conduct casino simulcasting unless the permit holder will conduct a number of live racing programs during the period for which the permit is issued which is equal to the following:

a. in the case of harness races, each permit holder shall conduct at least 75% of the average number of live racing programs conducted by that permit holder during calendar years 1990 and 1991; and

b. in the case of running races, Monmouth Racetrack shall conduct at least the same number of live racing programs conducted in 1991 and each of the other permit holders conducting running races shall conduct at least five live racing programs.

For the purpose of satisfying the requirements of this section for the conduct of live racing programs, any live racing program or part thereof which is cancelled because of weather or another act of God shall be deemed to have been conducted, subject to the approval of the New Jersey Racing Commission.

2. Section 11 of P.L.1992, c.19 (C.5:12-201) is amended to read as follows:

C.5:12-201 Payment to out-of-State sending track.

11. a. Except as provided in subsection b. of this section, a casino which receives a simulcast horse race from an out-of-State sending track shall not pay the out-of-State sending track for the transmission an amount equal to more than 3% of the parimutuel pool on each race. If the casino negotiates an agreement to pay the out-of-State sending track an amount equal to less than 3% of the parimutuel pool, the casino shall be entitled to retain the difference between the amount agreed upon and 3%.

b. Subject to the approval of the New Jersey Racing Commission and with respect to no more than 28 races per casino per calendar year, a casino may pay an out-of-State sending track an amount equal to not more than 6% of the parimutuel pool for the transmission of a race. If the casino negotiates an agreement to pay the out-of-State sending track an amount equal to less than 6% of the parimutuel pool, the casino shall be entitled to retain the difference between the amount agreed upon and 6%.

C.5:5-63.2 Interstate, intrastate handicapping contests, certain, authorized.

3. The New Jersey Racing Commission is authorized to permit a permit holder or casino simulcasting licensee to conduct interstate or intrastate thoroughbred or standardbred handicapping contests, if the commission determines that the holding of such contests is in the best interest of horse racing and the State. The commission shall have the power to prescribe rules, regulations and conditions under which a permit to conduct handicapping contests is issued, including commission review and revision of proposed contest rules, procedures to conduct a contest, and prize amounts. The commission shall also exercise oversight of the conduct of handicapping contests. The permit holder or casino simulcasting licensee may impose an entry fee for participation in any such contest.

The commission shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

4. This act shall take effect immediately.

Approved August 5, 2001.

CHAPTER 199

AN ACT concerning horse racing, supplementing chapter 5 of Title 5 of the Revised Statutes and amending various parts of the statutory law and making an appropriation.

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

C.5:5-127 Short title.

1. Sections 1-35 of this act shall be known and may be cited as the "Off-Track and Account Wagering Act."

C.5:5-128 Findings, declarations relative to horse racing and off-track wagering.

2. The Legislature finds and declares that:

a. The horse racing industry is economically important to this State, and the general welfare of the people of the State will be promoted by the advancement of horse racing and related projects and facilities in the State.

b. It is the intent of the Legislature, by authorizing off-track wagering and account wagering in this State, to promote the economic future of the horse racing industry in this State, to foster the potential for increased commerce, employment and recreational opportunities in this State and to preserve the State's open spaces.

c. It is the further intent of the Legislature that facilities offering off-track wagering opportunities to the public also offer other amenities such as quality dining and handicapping facilities.

d. The Legislature has determined that the New Jersey Racing Commission is best suited to oversee, license and regulate off-track wagering and account wagering in the State, and that the New Jersey Sports and Exposition Authority, by virtue of its operation of parimutuel wagering facilities and other entertainment-related projects in this State, is particularly well-suited to coordinate with other parties to promote the uniformity and success of off-track wagering throughout the State and to ensure the fiscal

soundness and technical reliability of an account wagering system, pursuant to the terms of this act.

e. In establishing off-track wagering facilities, the authority will not be performing an essential government function but rather an essentially private business function. Numerous municipalities, residents and businesses will be impacted by the establishment of off-track wagering facilities throughout the State. A municipality may oppose the placement of an off-track wagering facility within its boundaries at the discretion of the authority and the commission. A municipality may want an off-track wagering facility sited within its boundaries, but only if the municipality receives an appropriate level of property tax for municipal services. Therefore, fundamental fairness dictates that any municipality be empowered to refuse the siting of a facility within its boundaries. Fundamental fairness also dictates that an off-track wagering facility, even if owned and not leased by the authority, be subject to local property tax requirements.

f. By regulation of the Division of Alcoholic Beverage Control, there exist special licenses that permit the sale of alcoholic beverages on public property. These special licenses, typically available to the authority, are inexpensive and circumvent the traditional method for obtaining a license to sell alcoholic beverages. Because the establishment of off-track wagering facilities is, in reality, essentially a private business function and not an essential government function, the authority is not permitted to receive a special license. Under this act, only a private holder of a Class C plenary retail consumption license is permitted to provide alcoholic beverages at an off-track wagering facility.

C.5:5-129 Definitions relative to horse racing and off-track wagering.

3. As used in this act:

“Account holder” means a resident of this State over age 18 who establishes an account pursuant to this act through which account wagers are placed.

“Account wagering” means a form of parimutuel wagering in which an account holder may deposit money in an account with the account wagering licensee and then use the account balance to pay for parimutuel wagers by the account holder.

“Account wagering licensee” means the New Jersey Sports and Exposition Authority, provided that the commission has granted its approval for the authority to establish an account wagering system as provided for in this act.

“Account wagering system” means the system through which account wagers are processed by the account wagering licensee pursuant to this act.

“Authority” means the New Jersey Sports and Exposition Authority created by section 4 of P.L.1971, c.137 (C.5:10-4).

“Backstretch Benevolency” means the Backstretch Benevolency Programs Fund established pursuant to section 1 of P.L.1993, c.15 (C.5:5-44.8).

“Breeders and Stallions” means the distribution from the special trust account created pursuant to section 46 a. (2) of P.L.1940, c.17 (C.5:5-66) for the purposes of subparagraph (c) of that citation.

“Breeding and Development” means the New Jersey Horse Breeding and Development Account established pursuant to section 5 of P.L.1967, c.40 (C.5:5-88).

“Commission” means the New Jersey Racing Commission created by section 1 of P.L.1940, c.17 (C.5:5-22).

“Executive Director” means the Executive Director of the commission.

“Health and Welfare” means moneys distributed to the Standardbred Breeders' and Owners' Association for the administration of a health benefits program pursuant to section 46 a. (5) of P.L.1940, c.17 (C.5:5-66).

“In-State host track” means a racetrack within this State which is operated by a permit holder which conducts a horse race upon which account wagers are placed pursuant to this act.

“In-State sending track” means a racetrack within this State which is operated by a permit holder and is equipped to conduct off-track simulcasting.

“In-State track” means an in-State host track or an in-State sending track.

“Interstate common pool” means the parimutuel pool established within this State or in another state or foreign nation within which is combined parimutuel pools of one or more receiving tracks located in one or more states or foreign nations upon a race at an out-of-State sending track or out-of-State host track for the purpose of establishing payoff prices in the various jurisdictions.

“Jockey's Health and Welfare” means a health and welfare trust established by the organization certified by the New Jersey Racing Commission as representing a majority of the active licensed thoroughbred jockeys in New Jersey for the purpose of providing health and welfare benefits to active, disabled and retired New Jersey jockeys and their dependents based upon reasonable criteria by that organization.

“New Jersey Racing Industry Special Fund” means the fund established pursuant to section 27 of this act.

“New Jersey Thoroughbred Horseman's Association” means the association representing the majority of New Jersey thoroughbred owners

and trainers responsible for receiving and distributing funds for programs designed to aid thoroughbred horsemen.

“Off-track simulcasting” means the simultaneous audio or visual transmission of horse races conducted at in-State and out-of-State racetracks to off-track wagering facilities and parimutuel wagering at those off-track wagering facilities on the results of those races.

“Off-track wagering” means parimutuel wagering at an off-track wagering facility as authorized under this act.

“Off-track wagering facility” means a licensed facility, other than a racetrack, at which parimutuel wagering is conducted pursuant to this act.

“Off-track wagering licensee” means the New Jersey Sports and Exposition Authority, provided that the commission has granted its approval for the authority to conduct an off-track wagering facility as provided for in this act.

“Out-of-State host track” means a racetrack in a jurisdiction other than the State of New Jersey, the operator of which is lawfully permitted to conduct a horse race meeting and which conducts horse races upon which account wagers may be placed pursuant to this act.

“Out-of-State sending track” means a racetrack in a jurisdiction other than the State of New Jersey which is equipped to conduct off-track simulcasting and the operator of which is lawfully permitted to conduct a horse race meeting and to provide simulcast horse races to off-track wagering facilities in this State.

“Out-of-State track” means an out-of-State host track or an out-of-State sending track.

“Outstanding parimutuel ticket” means a winning parimutuel ticket which is not claimed within six months of sale.

“Parimutuel” means any system whereby wagers with respect to the outcome of a horse race are placed with, or in, a wagering pool conducted by an authorized person, and in which the participants are wagering with each other and not against the person conducting the wagering pool.

“Participation agreement” means the written contract that provides for the establishment or implementation of either (a) an off-track wagering facility or facilities or (b) an account wagering system. Each such contract shall set forth the manner in which the off-track wagering facility or facilities or the account wagering system shall be managed, operated and capitalized, as well as how expenses and revenues shall be allocated and distributed by and among the authority and the other eligible participants.

“Permit holder” means the holder of an annual permit to conduct a horse race meeting issued by the commission.

“Racetrack” means the physical facility where a permit holder conducts a horse race meeting with parimutuel wagering.

“Racing costs” means the prospective and actual costs for all licensing, investigation, operation, regulation, supervision and enforcement activities and functions performed by the commission.

“Simulcast horse races” means horse races conducted at an in-State sending track or an out-of-State sending track, as the case may be, and transmitted simultaneously by picture to a receiving track or an off-track wagering facility.

“Sire Stakes” means the Sire Stakes Program established pursuant to section 1 of P.L.1971, c.85 (C.5:5-91).

“Standardbred Drivers' Health and Welfare” means a health and welfare trust established by the Standardbred Breeders' and Owners' Association of New Jersey for the purpose of providing health and welfare benefits to active, disabled and retired New Jersey standardbred drivers and their dependents based upon reasonable criteria by that organization.

“Takeout” means that portion of a wager which is deducted from or not included in the parimutuel pool, and which is distributed other than to persons placing wagers.

“Thoroughbred Breeders and Stallions” means the special trust account created pursuant to section 46 b.(1)(e) of P.L.1940, c.17 (C.5:5-66).

C.5:5-130 Issuance of license to authority to permit off-track wagering.

4. a. The commission is authorized to issue a license to the authority to permit off-track wagering at a specified facility, upon application of the authority and in accordance with the provisions of this act. A license issued pursuant to this act shall be valid for a period of one year. The commission shall issue a license only if the authority schedules at least the minimum number of race dates required in section 30 of this act and it is satisfied that the authority has entered into a participation agreement with each and every other person, partnership, association, corporation, or authority or the successor in interest to such person, partnership, association, corporation or authority that:

- (1) held a valid permit to hold or conduct a race horse meeting within this State in the calendar year 2000;
- (2) has complied with the terms of such permit; and
- (3) is in good standing with the commission and the State of New Jersey.

An off-track wagering license may not be transferred or assigned to a successor in interest without the approval of the commission and the Attorney General, which approval may not be unreasonably withheld.

b. As part of the license application process, any participation agreement entered into for the purposes of this section, or any modification to the agreement made thereafter, shall be reviewed by the commission and

the Attorney General to determine whether the agreement meets the requirements of this act and shall be subject to the approval of the commission and the Attorney General.

C.5:5-131 Filing fee, certification by authority; standards.

5. a. At the time of filing an application for an off-track wagering license, the authority shall submit to the commission a non-refundable filing fee in an amount established by regulation by the commission, and a certification in a form prescribed by the commission which specifies, but is not limited to, the following information:

(1) a plan depicting the proposed facility and improvements thereon, including information about the size, seating capacity, parking and services to be provided at the facility;

(2) the location of the proposed facility, and relevant demographic or other information concerning the municipality and surrounding area where the proposed facility is to be located;

(3) the number of permanent and part-time jobs expected to be created at the proposed facility, and gross revenues expected to be generated by the facility;

(4) the fire evacuation plan for the proposed facility;

(5) the type of food and beverages available; and

(6) such other information as the commission may require.

b. A separate application and certification shall be filed for each off-track wagering facility that the authority proposes to establish.

c. The commission shall establish by regulation procedures and conditions for renewal of licenses issued under this act.

d. The commission shall by regulation establish the maximum hours of operation of off-track wagering facilities.

e. Notwithstanding R.S.33:1-42, alcoholic beverages may be offered for on-premise consumption at an off-track wagering facility only if provided by a Class C plenary retail consumption licensee, by an agreement or contract with the authority, pursuant to the provisions of R.S.33:1-1 et seq. in accordance with such procedures as established by statute and by regulation of the Division of Alcoholic Beverage Control. The authority shall not hold a license to provide alcoholic beverages at an off-track wagering facility.

f. Persons under the age of 18 years shall not be permitted in any off-track wagering facility, except in dining areas if accompanied by a parent or guardian.

g. The commission shall by regulation establish minimum standards for off-track wagering facilities, including, but not limited to, standards for size, seating capacity, parking and services to be provided.

h. The authority, in lieu of obtaining municipal zoning and planning approvals that may otherwise be required in connection with the off-track wagering facility, shall submit a written notice of its intention to site an off-track wagering facility to the governing body of the municipality within which the facility would be sited. The notice shall identify the proposed site of the facility by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's offices. Within 45 days of its receipt of the authority's notice of intention, the municipal governing body may disapprove of the proposed site of an off-track wagering facility by adopting a resolution which shall be valid and binding upon the authority and the commission upon delivery of a duly certified copy of the resolution to the authority and the commission. Whenever a municipality determines to consider a resolution disapproving a proposed off-track wagering facility, the authority shall be given an opportunity to offer a public presentation of the proposed facility prior to consideration of the resolution. A resolution disapproving a proposed off-track wagering facility shall state the reasons for disapproval.

In the event the governing body shall not adopt such a resolution, the authority may seek a license for an off-track wagering facility in that municipality and the commission may grant the authority the license provided that:

- (1) the proposed off-track wagering facility site is not in an area zoned residential;
- (2) the authority has submitted its plans to the municipal planning board, and complied with the provisions of section 22 of P.L. 1975, c.291 (C.40:55D-31); and
- (3) the authority has made reasonable efforts to address the reasonable concerns expressed by the municipal planning board.

C.5:5-132 Public hearing.

6. Within 14 days of receipt of a completed application, certification and applicable fees, the executive director shall determine whether the same is in due form and meets the requirements of law in all respects, and upon being satisfied thereof, the commission, within 45 days of receipt of a completed application, certification and applicable fees, shall hold a public hearing in the municipality in which the proposed off-track wagering facility is to be located. The costs of the public hearing shall be paid by the authority. The executive director shall cause a display advertisement, approximately 11 inches by 8 inches in size, to be published at least once in a daily newspaper, and at least once in a weekly newspaper, published, or circulated if none is published, in the county where the municipality is located at least 15 days before the date of the public hearing and to be

published again in that daily newspaper on the third day preceding the public hearing and in the latest edition of that weekly newspaper that will be in circulation on the third day preceding the public hearing. The advertisement shall contain sufficient information to apprise the public as to the purpose of the hearing, the time and place thereof, and the nature of the license applied for. The advertisement shall be prepared and placed by the executive director, but shall be paid for by the authority.

C.5:5-133 Final determination on license application.

7. a. No sooner than 30 days nor later than 60 days following the public hearing, the commission shall make a final determination on the license application. The commission shall approve the application if it determines that the plan for the proposed facility includes appropriate standards of quality for the premises and services it will provide and that the authority has demonstrated by clear and convincing evidence that establishment of the proposed off-track wagering facility will not be inimical to the interests of the public and the horse racing industry in this State. The commission shall submit its determination to the Attorney General for review and approval. The determination of the commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. Upon approval by the Attorney General, the commission shall issue to the authority an off-track wagering license specifying the location, the periods of time during a calendar year and the hours of operation during which off-track wagering is permitted at the facility, and prescribing any other conditions or terms the commission deems appropriate.

b. With the approval of the commission, the off-track wagering licensee may enter into a contract or agreement with a person or entity to conduct or operate an off-track wagering facility for the licensee and to act as the agent of the licensee in all off-track wagering matters approved by the commission.

C.5:5-134 Powers of commission relative to off-track wagering.

8. a. The commission shall have full power to prescribe rules, regulations and conditions under which all off-track wagering licenses are issued and renewed in the State, including requiring an annual audit of the off-track wagering licensee's books and records pertaining to off-track wagering, and to revoke, suspend or refuse to renew a license if in the opinion of the commission the revocation of, suspension of or refusal to renew such license is in the public interest; provided, however, that such rules, regulations and conditions shall be uniform in their application.

b. The commission shall have no right or power to determine who shall be officers, directors or employees of any off-track wagering facility, or the salaries thereof; provided, however, that the commission may compel the discharge of any official or employee of the licensee at the off-track wagering facility who: (1) fails or refuses for any reason to comply with the rules or regulations of the commission; (2) fails or refuses for any reason to comply with any of the provisions of this act; (3) fails to establish by clear and convincing evidence in the opinion of the commission good character, honesty, competency and integrity; or (4) has been convicted of a crime involving fraud, dishonesty or moral turpitude.

C.5:5-135 Right to control patrons.

9. Nothing in this act shall be deemed to abrogate the common law right or any other right established by law to exclude or eject permanently from any off-track wagering facility any person who disrupts the operations of its premises, threatens the security of its premises or its occupants, or is disorderly or intoxicated.

C.5:5-136 Limit on number of facilities.

10. a. The total number of off-track wagering facilities licensed in this State pursuant to this act shall not exceed 15.

b. The commission shall issue no more than eight off-track wagering licenses within the first two years of the effective date of this act.

C.5:5-137 Simulcasting permitted.

11. It shall be lawful for the off-track wagering licensee to conduct off-track simulcasting at the off-track wagering facility with all in-State sending tracks and with any out-of-State sending track in accordance with the provisions of this act and applicable regulations which the commission may promulgate.

C.5:5-138 Transmission of races from in-State sending tracks.

12. An in-State sending track may transmit to licensed off-track wagering facilities all or some of the live races conducted at the racetrack. The off-track wagering licensee, as a condition of continued operation of the off-track wagering facility, shall receive all live races which are offered and transmitted by in-State sending tracks.

C.5:5-139 Issuance of license to establish account wagering system.

13. a. The commission is authorized to issue a license to the authority to establish an account wagering system in accordance with the provisions of this act. A license issued pursuant to this act shall be valid for a term of one year. The commission shall issue a license only if the authority schedules at least the minimum number of race dates required in section 30

of this act and it is satisfied that the authority has entered into a participation agreement with each and every person, partnership, association, corporation or authority or the successor in interest to such person, partnership, association, corporation or authority that:

- (1) held a valid permit to hold or conduct a race horse meeting within this State in the calendar year 2000 consisting of at least 40 live race dates in the aggregate at the permit holder's racetrack;
- (2) has complied with the terms of such permit; and
- (3) is in good standing with the commission and the State of New Jersey.

An account wagering license may not be transferred or assigned to a successor in interest without the approval of the commission and the Attorney General, which approval may not be unreasonably withheld.

b. As part of the license application process, any participation agreement, or any modification to the agreement made thereafter, entered into for the purposes of this section shall be reviewed by the commission and the Attorney General to determine whether the agreement meets the requirements of this act and shall be subject to the approval of the commission and the Attorney General.

c. At the time of filing an application for licensure under this section, the authority shall submit to the commission a non-refundable filing fee in an amount established by regulation by the commission, and a certification in a form prescribed by the commission which specifies, but is not limited to, information about the operation of the account wagering system and the authority's participation therein.

C.5:5-140 Public hearing.

14. a. Within 14 days of receipt of a completed application, certification and applicable fees, the executive director shall determine whether the same is in due form and meets the requirements of law in all respects, and upon being satisfied thereof, the executive director, within 45 days of receipt of a completed application, certification and applicable fees, shall hold a public hearing, the costs of which shall be paid by the applicant.

b. No sooner than 30 days nor later than 60 days following the public hearing, the commission shall make a final determination on the application. The commission shall approve the application if it determines that the authority has demonstrated by clear and convincing evidence that wagers placed through the proposed account wagering system will be accurately processed and that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State. The commission's determination shall be submitted to the Attorney General for review and approval. The determination of the commission shall be deemed approved

by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. Upon approval by the Attorney General, the commission shall issue to the authority a license to participate in the account wagering system.

c. With the approval of the commission, an account wagering licensee may enter into a contract or agreement with a person or entity to conduct or operate an account wagering system or facility for the licensee and to act as the agent of the licensee in all account wagering matters approved by the commission.

C.5:5-141 Powers of commission relative to account wagering.

15. a. The commission shall have full power to prescribe rules, regulations and conditions under which all account wagering licenses are issued or renewed in this State, including requiring an annual audit of the account wagering licensee's books and records pertaining to account wagering, and to revoke, suspend or refuse to renew a license if in the opinion of the commission the revocation of, suspension of or refusal to renew such license is in the public interest; provided, however, that such rules, regulations and conditions shall be uniform in their application.

b. The commission shall have no right or power to determine who shall be officers, directors or employees of any account wagering licensee, or the salaries thereof; provided, however, that the commission may compel the discharge of any official or employee of the licensee or the account wagering system who: (1) fails or refuses for any reason to comply with the rules or regulations of the commission; (2) fails or refuses for any reason to comply with any of the provisions of this act; (3) fails to establish by clear and convincing evidence in the opinion of the commission good character, honesty, competency and integrity; or (4) has been convicted of a crime involving fraud, dishonesty or moral turpitude.

C.5:5-142 Requirements for account wagering.

16. a. A person shall not place an account wager from within this State except in accordance with this act through the account wagering licensee, and no entity, other than the account wagering licensee, shall accept an account wager from a person within this State. A person may not place an account wager unless the person has established an account with the account wagering licensee. To establish a wagering account, a person shall be a New Jersey resident at least 18 years of age.

b. The account shall be in the name of a natural person and may not be in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity.

c. An account may be established by a person completing an application form approved by the commission and submitting it together with a certification, or other proof, of age and residency. The form shall include the address of the principal residence of the prospective account holder and a statement that a false statement made in regard to an application may subject the applicant to prosecution.

d. The prospective account holder shall submit the completed application to the account wagering licensee, to any account wagering participating permit holder or to a licensed off-track wagering facility or such other person or entity as may be approved by the commission. The account wagering licensee may accept or reject an application after receipt and review of the application and certification, or other proof, of age and residency for compliance with this act.

e. Any prospective account holder who provides false or misleading information on the application is subject to rejection of the application or cancellation of the account by the account wagering licensee without notice.

f. The account wagering licensee shall have the right to suspend or close any wagering account at its discretion.

g. Any person not in good standing with the commission shall not be entitled to maintain a wagering account.

h. The address provided by the applicant in the application shall be deemed the proper address for the purposes of mailing checks, account withdrawals, notices and other materials.

i. A wagering account shall not be assignable or otherwise transferable.

j. Except as otherwise provided in this act or in regulations which the commission may adopt hereunder, all account wagers shall be final and no wager shall be canceled by the account holder at any time after the wager has been accepted by the account wagering licensee.

k. For the purposes of this act and notwithstanding any other law to the contrary, all messages or orders to place account wagers received by the licensee on behalf of a participating permit holder shall be deemed made to a place within this State.

l. All persons accepting account wagers on behalf of the account wagering licensee shall do so at a location within this State.

m. The account wagering licensee may at any time declare the system closed for receiving any wagers on any race or closed for all wagering.

C.5:5-143 Credits to a wagering account.

17. a. Credits to a wagering account shall be made as follows:

(1) The account holder's deposits to the wagering account shall be submitted by the account holder to the account wagering licensee and shall be in the form of one of the following:

- (a) cash given to the account wagering licensee;
- (b) check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the account wagering licensee; or
- (c) charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic means to the account wagering licensee or its agent by the account holder if the use of the card has been approved by the account wagering licensee.

(2) Credit for winnings from wagers placed with funds in a wagering account and credit for account wagers on horses that are scratched shall be posted to the account by the account wagering licensee.

(3) The account wagering licensee shall have the right to refuse for any reason all or part of any wager or deposit to the account.

(4) Funds deposited in the account shall not bear interest to the account holder.

b. Debits to a wagering account shall be made as follows:

(1) Upon receipt by the account wagering licensee of an account wager properly placed pursuant to section 18 of this act, the account wagering licensee shall debit the account holder's wagering account in the amount of the wager.

(2) The account wagering licensee may authorize a withdrawal from a wagering account when the account holder submits to the licensee, the licensee's agent, a participating permit holder, a licensed off-track wagering facility or such other entity as may be approved by the commission the following:

- (i) proper identification;
- (ii) the correct personal identification number; and
- (iii) a properly completed and executed withdrawal slip on a form approved by the commission.

Upon receipt of a properly completed and executed withdrawal form, and if there are sufficient funds in the account to cover the withdrawal, the licensee shall send, within three business days of receipt, a check to the holder at the address specified in the application for the wagering account. The check shall be made payable only to the holder of the wagering account and in the amount of the requested withdrawal.

C.5:5-144 Acceptance of account wagers.

18. The account wagering licensee may accept account wagers only from residents of New Jersey and only as follows:

a. The account wager shall be placed directly with the account wagering licensee by the holder of the wagering account.

b. The account holder placing the account wager shall provide the licensee with the correct personal identification number of the holder of the wagering account.

c. A licensee may not accept an account wager, or series of wagers, in an amount in excess of funds on deposit in the wagering account of the holder placing the wager. Funds on deposit include amounts credited under section 17 of this act and in the account at the time the wager is placed.

d. Only the holder of a wagering account shall place an account wager. Unless otherwise approved by the commission, no person, corporation or other entity shall directly or indirectly act as an intermediary, transmitter or agent in the placing of wagers for a holder of a wagering account; provided, however, that the use of credit or debit cards specifically approved by the licensee or the use of checks, money orders or negotiable orders of withdrawal or the use of telephonic, computer or electronic means by the account holder to place such wagers shall not be prohibited.

e. The account holder may place a wager in person, by direct telephone call or by communication through other electronic media.

C.5:5-145 Distribution of inactive, dormant accounts.

19. All amounts remaining in wagering accounts inactive or dormant for such period and under such conditions as established by regulation shall be paid 50% to the account wagering licensee and 50% to the New Jersey Racing Industry Special Fund.

C.5:5-146 Inclusion of amounts wagered in parimutuel pool.

20. Sums wagered at the off-track wagering facility on the result of a simulcast horse race at an in-State sending track, or through the account wagering system on a race conducted at an in-State host track, shall be included in the appropriate parimutuel pool generated at the in-State track and shall be distributed pursuant to section 21 of this act. Payments to persons holding winning tickets at an off-track wagering facility or through the account wagering system, shall be made according to the same odds as those generated at the in-State track.

C.5:5-147 Distribution of sums in parimutuel pool.

21. Sums wagered at an off-track wagering facility on races being transmitted to that off-track wagering facility from an in-State sending track and sums wagered through the account wagering system on a race

conducted at an in-State host track shall be deposited in the parimutuel pool generated at the in-State track for those races and shall be distributed in accordance with the provisions of section 44 of P.L.1940, c.17 (C.5:5-64) or section 1 of P.L.1984, c.236 (C.5:5-64.1), as appropriate. Such sums wagered at an off-track wagering facility or through the account wagering system which remain undistributed pursuant to those sections shall be distributed as follows, except that moneys resulting from breakage on amounts wagered at the off-track wagering facility or through the account wagering system and from outstanding parimutuel ticket moneys issued at the off-track wagering facility or through the account wagering system shall be distributed as provided by subsection g. of this section.

a. 6% of the parimutuel pool generated at the off-track wagering facility or through the account wagering system shall be paid to the in-State track for overnight purses. In the event that (1) any racetrack at which a horse race meeting was conducted in calendar year 2000 ceases to operate as a racetrack prior to calendar year 2003 and (2) an off-track wagering facility is operated on that former racetrack site, 6.15% of the parimutuel pool generated at that off-track wagering facility shall be paid to the in-State sending track for overnight purses.

b. 0.6% of the parimutuel pool generated at the off-track wagering facility or through the account wagering system shall be set aside as follows:

(1) in the case of harness races conducted by an in-State track, in the special trust account established pursuant to or specified in section 46a.(2) of P.L.1940, c.17 (C.5:5-66), section 2b. of P.L.1984, c.236 (C.5:5-66.1), section 5a.(1) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(a) of P.L.1971, c.137 (C.5:10-7), as appropriate, for use and distribution as provided in section 46a.(2)(a),(b) and (c) of P.L.1940, c.17 (C.5:5-66), sections 2b.(1), (2) and (3) of P.L.1984, c.236 (C.5:5-66.1), section 5a.(1)(a), (b) and (c) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(a)(i), (ii) and (iii) of P.L.1971, c.137 (C.5:10-7); and

(2) in the case of running races conducted by an in-State track, in the special trust account established pursuant to or specified in section 46b.(1)(e) or (2)(e) of P.L.1940, c.17 (C.5:5-66), section 5b.(3) of P.L.1982, c.201 (C.5:5-98), or section 7f.(2)(c) of P.L.1971, c.137 (C.5:10-7), as appropriate, for use and distribution as provided therein, as appropriate.

c. 0.02% of the parimutuel pool generated at the off-track wagering facility or through the account wagering system shall be paid to Breeding and Development.

d. 0.02% of the parimutuel pool generated at the off-track wagering facility or through the account wagering system shall be paid to Backstretch Benevolency.

e. 0.06% of the parimutuel pool generated at the off-track wagering facility or through the account wagering system shall be set aside as follows: (1) in the case of harness races, to Health and Welfare; and (2) in the case of running races, to Thoroughbred Breeders and Stallions.

f. The remainder of the parimutuel pool after deduction of the amounts under subsections a. through f. of this section shall be paid to the off-track wagering licensee or the account wagering licensee, as appropriate on a pro rata basis, as determined by the commission based upon the volume of wagering handled by each licensee.

g. All breakage moneys and outstanding parimutuel ticket moneys resulting from wagering at the off-track wagering facility or through the account wagering system on races conducted by an in-State track shall be paid to the commission for racing costs in accordance with section 26 of this act. If in any calendar year the total amount of breakage moneys and outstanding parimutuel ticket moneys referred to herein exceeds amounts required to pay racing costs as provided in section 26 of this act, such remaining funds shall be allocated as follows: 50% to the off-track wagering licensee or the account wagering licensee, as appropriate and 50% to the New Jersey Racing Industry Special Fund.

C.5:5-148 Receipt of simulcasts transmitted from out-of-State tracks.

22. a. The off-track wagering licensee may, in accordance with the provisions of this act and any applicable regulations of the commission and with the approval of the commission, also receive at the facility simulcast horse races conducted at out-of-State sending tracks; provided, however, that the off-track wagering licensee may receive simulcast horse races from only those out-of-State sending tracks that have been approved by the commission, which approval may not be unreasonably withheld.

b. An account wagering licensee may, with the approval of the commission, also accept account wagers on horse races conducted at out-of-State host tracks; provided, however, that the account wagering licensee may receive wagers on out-of-State horse races from only those out-of-State host tracks that have been approved by the commission, which approval may not be unreasonably withheld.

C.5:5-149 Payments to sending track.

23. a. The off-track wagering licensee receiving a simulcast horse race from an out-of-State sending track shall pay to the out-of-State sending track for the transmission such amount, if any, as may be agreed upon by the off-track wagering licensee and the out-of-State sending track.

b. The account wagering licensee accepting account wagers on a horse race conducted at an out-of-State host track shall pay to the out-of-State host

track such amount, if any, as provided in the agreement, if any, between the account wagering licensee and the out-of-State host track.

C.5:5-150 Conditions for participation by out-of-State tracks; interstate common pools.

24. a. Except as provided in subsection b. of this section, the commission shall not permit an out-of-State sending track or an out-of-State host track to participate in off-track simulcasting or qualify as an out-of-State host track, respectively, unless the parimutuel pools respecting the off-track wagering facility or the account wagering system shall be combined with comparable parimutuel pools at the out-of-State track. The types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and the percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-State track.

b. With the prior approval of the commission and the concurrence of the out-of-State track, an off-track wagering licensee or the account wagering licensee, and receiving tracks or entities in other states other than the state in which the out-of-State track is located may form an interstate common pool. With respect to such interstate common pools, the commission may approve types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and a percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders which are different from those which would otherwise be applied in this State but which are consistent for all parties to the interstate common pool.

C.5:5-151 Takeout rate, distribution.

25. Sums wagered at an off-track wagering facility on races being transmitted to that off-track wagering facility from an out-of-State sending track and sums wagered through the account wagering system on races conducted by an out-of-State host track shall be subject to the takeout rate determined pursuant to section 24 of this act and the sums resulting from that takeout rate as applied to the parimutuel pool generated at the off-track wagering facility or through the account wagering system shall be distributed as follows, except money resulting from breakage on amounts wagered at the off-track wagering facility or through the account wagering system and from outstanding parimutuel ticket moneys issued at the off-track wagering facility shall be distributed as provided by subsection c. of this section.

a. The amount, if any, as agreed by the off-track wagering licensee or account wagering licensee and the out-of-State track pursuant to section 23 of this act shall be paid to the out-of State track.

b. Of the amount remaining after the deduction of the amount under subsection a. of this section from the amount of the takeout rate, 40% shall be paid to the New Jersey Racing Industry Special Fund and 60% shall be paid to the off-track wagering licensee or the account wagering licensee, as appropriate.

c. Breakage moneys and outstanding parimutuel ticket moneys resulting from wagering at the off-track wagering facility or through the account wagering system on races conducted by the out-of-State track shall be distributed as follows: \$150,000 annually to Jockey's Health and Welfare, \$150,000 annually to Standardbred Drivers' Health and Welfare, and all remaining moneys to the commission for racing costs in accordance with section 26 of this act. If in any calendar year the total amount of breakage moneys and outstanding parimutuel ticket moneys referred to herein exceed the \$300,000 to be paid to Jockey's Health and Welfare and Standardbred Drivers' Health and Welfare, and the amounts required to pay racing costs as provided in section 26 of this act, such remaining funds shall be allocated as follows: 50% to the off-track wagering licensee or account wagering licensee, as appropriate and 50% to the New Jersey Racing Industry Special Fund.

C.5:5-152 Annual certification of racing costs.

26. a. The State Treasurer shall certify racing costs on an annual basis. These racing costs shall be the basis for payment and reimbursement to the commission from the following sources, in the following order:

- (1) license and permit fees received by the commission;
- (2) breakage moneys and outstanding parimutuel ticket moneys as provided in sections 21 and 25 of this act, and the outstanding parimutuel ticket moneys as provided in section 44 of P.L.1940, c.17 (C.5:5-64), section 1 of P.L.1984, c.236 (C.5:5-64.1) and section 7 of P.L.1971, c.137 (C.5:10-7).

b. If, in any year, amounts received by the commission from the sources specified in subsection a. of this section are not sufficient to reimburse the commission for racing costs, there shall be an assessment against permit holders or successors in interest to permit holders, if applicable, to reimburse the commission for its costs for which funds are not otherwise appropriated to the commission by law. Such assessment shall be approved by the State Treasurer. The commission shall establish, by regulation, an assessment formula which apportions such costs to each permit holder or successor in interest, if applicable.

c. Subject to the approval of the State Treasurer, the commission may adjust the annual assessment when necessary to cover expenditures not anticipated at the time of the assessment.

d. The funds derived from the sources specified in this section shall be held in a non-lapsing dedicated account, for use in accordance with the provisions of this section.

C.5:5-153 "New Jersey Racing Industry Special Fund."

27. The commission shall establish and administer a separate fund to be known as the "New Jersey Racing Industry Special Fund" into which shall be deposited the sums dedicated to the fund by sections 19, 21 and 25 of this act. Money deposited in this special fund shall be disbursed monthly by the commission and used as follows:

a. 92% shall be distributed as follows:

(1) in the case of money deposited into the special fund from the off-track wagering facility located on the former site of the Atlantic City Race Course, or, if no off-track wagering facility exists on that former site, the off-track wagering facility located closest to that former site, 100% to permit holders conducting thoroughbred racing;

(2) except as provided in paragraph (1), 65% to permit holders conducting thoroughbred racing and 35% to permit holders conducting harness racing;

Of the allocations made pursuant to this subsection to permit holders conducting thoroughbred racing, specific distributions shall be made to the overnight thoroughbred purse account of each permit holder and for programs designed to aid the thoroughbred horsemen and the New Jersey Thoroughbred Horseman's Association. Expenditures for programs designed to aid the thoroughbred horsemen and the New Jersey Thoroughbred Horseman's Association shall not exceed 2.9% of such allocations. Distribution among thoroughbred permit holders shall be based on the following formula: total overnight thoroughbred purse distribution for each permit holder in the prior calendar year divided by the total overnight thoroughbred purse distribution of all permit holders in the prior calendar year.

Of the allocations made pursuant to this subsection to permit holders conducting standardbred racing, specific distributions shall be made to the overnight standardbred purse account of each permit holder and for programs designed to aid the standardbred horsemen and the Standardbred Breeders' and Owners' Association of New Jersey. Expenditures for programs designed to aid the standardbred horsemen and the Standardbred Breeders' and Owners' Association of New Jersey shall not exceed 3.5% of such allocations. Distribution among standardbred permit holders shall be based on the following formula: total overnight standardbred purse distribution for each permit holder in the prior calendar year divided by the total overnight standardbred purse distribution of all permit holders in the prior calendar year.

b. 8% shall be distributed as follows:

(1) in the case of money deposited into the special fund from the off-track wagering facility located on the former site of the Atlantic City Race Course, or, if no off-track wagering facility exists on that former site, the off-track wagering facility located closest to that former site, 100% to thoroughbred funds; and

(2) except as provided in paragraph (1), 65% to thoroughbred funds and 35% to harness funds.

Of the amounts distributed to thoroughbred funds pursuant to this subsection, the following distributions shall apply: 94% to Thoroughbred Breeders and Stallions; 3% to Backstretch Benevolency; and 3% to Breeding and Development.

Of the amount distributed to harness funds pursuant to this subsection, the following distributions shall apply: 75% to Sire Stakes; 8% to Breeders and Stallions; 3.5% to Backstretch Benevolency; 10% to Health and Welfare; and 3.5% to Breeding and Development.

C.5:5-154 Licensing, registration of persons conducting wagering-related activities.

28. All persons engaged in conducting wagering-related activities at an off-track facility or through an account wagering system, whether employed directly by the licensee or by a person or entity conducting or operating the off-track wagering facility or account wagering system to an agreement with the licensee, shall be licensed or registered in accordance with such regulations as may be promulgated by the commission hereunder. All other employees at the off-track wagering facility or of account wagering system shall be licensed or registered in accordance with regulations of the commission. The commission shall have full power to prescribe rules, regulations and conditions under which all such licenses are issued, or registrations made, in this State and to revoke or refuse to issue a license, or revoke or refuse to accept a registration, if in the opinion of the commission the revocation or refusal is in the public interest, provided, however, that such rules, regulations and conditions shall be uniform in their application, and further provided that no fee shall be in excess of \$50 for each license so granted or registration accepted.

C.5:5-155 One-time right of first refusal offers of employment.

29. a. A person employed by a permit holder in the admissions department or parimutuel clerk department of a racetrack operated by a permit holder, or employed at the racetrack by a food and beverage vendor contracting with the permit holder to provide food and beverages at the racetrack, shall be given a one-time right of first refusal offer of employment, as each off-track wagering facility opens, for the then available positions of similar employment in that off-track wagering facility,

including any similar employment with the off-track wagering licensee or with any vendor contracting with the licensee to provide food and beverages at the off-track wagering facility, or as each account wagering licensee implements account wagering, for the then available positions of similar employment with any account wagering licensee.

b. In the event that an off-track wagering facility is sited and begins operations at the location or in the proximity of a former racetrack, a person who, at the time of the closing of the former racetrack, worked as an employee of the permit holder in the admissions department or parimutuel clerk department of the former racetrack operated by the permit holder, or who, at the time of the closing of the former racetrack, worked at the racetrack as an employee of a food and beverage vendor contracting with the permit holder to provide food and beverages at the former racetrack, shall be given a one-time right of first refusal offer of similar employment at the off-track wagering facility. In the event that there are not a sufficient number of employment opportunities for each of the former employees who seek a position pursuant to the provisions of this subsection, then each such former employee, for a period of four years thereafter, shall have the right of first refusal set forth in the provisions of subsection a. of this section. Employment opportunities that remain after each former employee has been given an offer of similar employment shall be made available to other persons in accordance with the provisions of subsection a. of this section.

c. An employee of the permit holder or vendor contracting with the permit holder who is given preference for employment pursuant to subsections a. and b. of this section and accepts the employment shall not suffer, at the time that the change in employment occurs, any reduction in seniority, pay, or employer contribution to pension and health benefits, and shall receive a substantially equivalent level of benefits.

C.5:5-156 Scheduling of race dates, minimum required.

30. a. The permit holder at Monmouth Park and the thoroughbred permit holder at the Meadowlands together shall schedule (1) no fewer than 141 thoroughbred race dates in the aggregate in each of calendar years 2002, 2003 and 2004; and (2) no fewer than 141 thoroughbred race dates in the aggregate in each calendar year thereafter, provided that the permit holders may schedule fewer than 141 thoroughbred race dates in the aggregate if the commission determines, upon application by the permit holders, that scheduling fewer dates in that calendar year is in the best interest of the racing industry and the State. In making its determination, the commission shall consider all factors, including, but not limited to, handle, number of starters, interstate competition, and export marketability. Notwithstanding

the foregoing, in no calendar year shall the permit holders schedule, in the aggregate, fewer than 120 thoroughbred race dates;

b. the standardbred permit holder at the Meadowlands shall schedule annually no fewer than 151 standardbred race dates; and

c. the permit holders at Freehold Raceway shall schedule annually no fewer than 192 standardbred race dates.

C.5:5-22.1 Delivery, certification of commission minutes to Governor; approval.

31. A true copy of the minutes of every meeting of the commission shall be forthwith delivered by and under the certification of, the executive director thereof to the Governor. No action taken at such meeting of the commission shall have force and effect until the earlier of 10 days, exclusive of Saturdays, Sundays and public holidays, after such copy of the minutes shall have been so delivered, or the approval thereof by the Governor. If, in the 10-day period, the Governor returns such copy of the minutes with veto of any action taken by the commission or any member thereof at such meeting, such action shall be null and void and of no effect. The Governor may approve all or part of the action taken at such meeting, prior to the expiration of the 10-day period. This section shall not apply to enforcement actions for violations of regulations promulgated by the commission.

C.5:5-157 Severability.

32. The provisions of this act shall be deemed to be severable, and if any phrase, clause, sentence or provision of this act is declared to be unconstitutional or the applicability thereof to any person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

C.5:5-158 Rules, regulations.

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

C.5:5-159 Annual assessment to fund certain programs for compulsive gambling.

34. In addition to any other funds provided by law for prevention, education and treatment programs for compulsive gamblers, beginning on July 1, 2003, there shall be an annual assessment against permit holders or successors in interest to permit holders, if applicable, of a total sum of \$200,000 in the aggregate which shall be paid into the General Fund for appropriation by the Legislature to the Department of Health and Senior Services for prevention and education and treatment programs for compulsive gambling that meet the criteria developed pursuant to section 2 of P.L.1993, c.229 (C.26:2-169), such as those provided by the Council on Compulsive Gambling of New Jersey. Such funds shall be used to address

compulsive gambling issues related to off-track wagering facilities and account wagering. The New Jersey Racing Commission shall, by regulation, establish a formula which apportions the assessment to each permit holder or successor in interest, if applicable.

C.5:5-160 Supplementation, enhancement of purses at authority owned tracks.

35. In order to retain the competitive position of the standardbred and thoroughbred racing programs at the authority owned racetracks during the period in which the off-track wagering and account wagering systems are developed, the authority, as it deems appropriate, may supplement or enhance purses at its racetracks; provided, however, that any such supplements shall be decreased as the off-track wagering and account wagering systems are developed.

36. On or before July 1, 2002, the commission shall submit to the Governor and the Legislature a report indicating the feasibility of establishing a permanent training facility or other means to permit winter stabling for the New Jersey racing industry and \$95,000 is appropriated from the General Fund to the commission for that purpose.

37. Section 37 of P.L.1992, c.19 (C.5:5-125) is amended to read as follows:

C.5:5-125 Race track may receive simulcast transmissions from out-of-State track; interstate common pools, formation.

37. a. (1) Notwithstanding any other law to the contrary, the New Jersey Racing Commission, upon application by a receiving track, as defined in section 2 of P.L.1985, c.269 (C.5:5-111), and in accordance with applicable federal law, may permit the track to receive, in addition to the horse races authorized by section 10 of P.L.1985, c.269 (C.5:5-119), simulcast transmissions of the racing program, in full or in part, from any out-of-State sending track, as defined in section 2 of P.L.1985, c.269 (C.5:5-111), during any time period, provided that the receiving track agrees to receive all simulcast horse races which any in-State sending track wishes to transmit to it during that same time period, and provided further that, except as provided in subsection b. of this section, the parimutuel pools at the receiving track shall be combined with comparable parimutuel pools at the out-of-State sending track. No limit shall be placed on the number of racing programs the track may receive from out-of-State sending tracks except as otherwise provided herein.

(2) Whenever an out-of-State sending track participates in simulcasting pursuant to paragraph (1) of this subsection and the parimutuel pools are combined at the out-of-State sending track, the types of wagering, takeout,

distribution of winnings, rules of racing, method of calculating breakage, and the percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-State sending track. However, moneys resulting from breakage on amounts wagered at the receiving track and from outstanding parimutuel tickets issued at the receiving track in all instances shall be distributed as provided by section 38 of this act.

b. With the prior approval of the New Jersey Racing Commission and the concurrence of the out-of-State sending track, a receiving track and receiving tracks or entities in other states other than the state in which the sending track is located may form an interstate common pool, as defined in section 2 of P.L.1985, c.269 (C.5:5-111). With respect to such interstate common pools, the Racing Commission may approve types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and a percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders which are different from those which would otherwise be applied in this State but which are consistent for all parties to the interstate common pool. However, moneys resulting from breakage on amounts wagered at the receiving track and from outstanding parimutuel tickets issued at the receiving track in all instances shall be distributed as provided in section 38 of this act.

c. (Deleted by amendment, P.L.2001, c.199).

38. Section 6 of P.L.1971, c.137 (C.5:10-6) is amended to read as follows:

C.5:10-6 Authority projects.

6. a. The authority, pursuant to the provisions of P.L.1971, c.137 (C.5:10-1 et seq.), is hereby authorized and empowered, either alone or in conjunction with others, and provided that, in the case of an arrangement with respect to any of the projects set forth in this section which shall be in conjunction with others, the authority shall have sufficient right and power to carry out the public purposes set forth in P.L.1971, c.137 (C.5:10-1 et seq.):

(1) To establish, develop, construct, operate, acquire, own, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, a project to be located in the Hackensack meadowlands upon a site not to exceed 750 acres and upon a site or sites outside of that acreage, but either immediately contiguous thereto or immediately across any public road which borders that acreage, consisting of one or more stadiums, coliseums,

arenas, pavilions, stands, field houses, playing fields, recreation centers, courts, gymnasiums, clubhouses, a racetrack for the holding of horse race meetings, and other buildings, structures, facilities, properties and appurtenances related to, incidental to, necessary for, or complementary to a complex suitable for the holding of athletic contests or other sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, including, but not limited to, driveways, roads, approaches, parking areas, parks, recreation areas, lodging facilities, vending facilities, restaurants, transportation structures, systems and facilities, and equipment, furnishings, and all other structures and appurtenant facilities, related to, incidental to, necessary for, or complementary to the purposes of that project or any facility thereof.

(2) To establish, develop, construct, acquire, lease or own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, a project, at a site within the State of New Jersey, consisting of a baseball stadium and other buildings, structures, facilities, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to a complex suitable for the holding of professional baseball games and other athletic contests or sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, such project to include driveways, roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and facilities, and equipment, furnishings and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of that project or any facility thereof.

(3) To establish, develop, construct, acquire, lease or own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, projects located within the State of New Jersey, but outside of the meadowlands complex, consisting of aquariums and the buildings, structures, facilities, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to those aquariums, such project to include driveways, roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and facilities, and equipment, furnishings and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of that project or any facility thereof. To provide for a project authorized under this paragraph:

(a) (Deleted by amendment, P.L.1988, c.172.)

(b) The authority is authorized to enter into agreements with the State Treasurer providing for the acquisition and construction of an aquarium by

the authority, including the land necessary for the aquarium, and the costs thereof, ownership of the aquarium and its land which shall be conveyed to the State upon completion, and the operation by the authority of the aquarium pursuant to a lease or other agreement with the State containing such terms and conditions as the State Treasurer may establish prior to the acquisition and construction by the authority of the aquarium and the disbursements of funds therefor. The State Treasurer is authorized to enter into a lease or other agreement to effectuate the provisions of this subparagraph.

(4) To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, a project consisting of an exposition or entertainment center or hotel or office complex, including any buildings, structures, properties and appurtenances related thereto, incidental thereto, necessary therefor, or complementary thereto, such project to include driveways, roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems, and equipment, furnishings and all other structures and appurtenances related to, incidental to, necessary for, or complementary to, the purposes of that project. A project authorized under this paragraph may be located within, immediately contiguous to, or immediately across any public road which borders the site of any other project of the authority, except the site of a racetrack authorized by paragraph (5) of this subsection and acquired by the authority prior to 1986.

(5) To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, projects consisting of (a) racetrack facilities located within the State of New Jersey, but outside of the meadowlands complex, (b) their contiguous properties, and (c) their auxiliary facilities, including, without limitation, pavilions, stands, field houses, clubhouses, training tracks for horses, racetracks for the holding of horse race meetings, fairgrounds, other exposition facilities, and other buildings, structures, facilities, properties and appurtenances related to, incidental to, necessary for, or complementary to a complex suitable for the holding of horse race meetings, other sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, including, but not limited to, driveways, roads, approaches, parking areas, parks, recreation areas, lodging facilities, vending facilities, restaurants, transportation structures, systems and facilities, equipment, furnishings, and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of any of those projects or any facility thereof.

Notwithstanding any law to the contrary, the acquisition of any existing racetrack facility in and licensed by the State of New Jersey shall be permitted on the condition that payments equivalent to all municipal, school board and county taxes due to each entity shall be paid by the authority to the extent and in accordance with the same payment schedule as taxes would have been paid each year, as though the racetrack facility remained in private ownership. In the event the authority conveys lands or other parts of the racetrack facility to others, the authority shall receive a reduction of such payments commensurate with the amount required to be paid by the subsequent owner of the lands and improvements disposed of by the authority. In addition, the authority shall be responsible for paying all existing local franchise fees, license and parking tax fees in effect at the time of the acquisition.

(6) To establish, develop, acquire, own, operate, manage, promote and otherwise effectuate, in whole or in part, either directly or indirectly through lessees, licensees or agents, projects consisting of events, expositions, teams, team franchises or membership in professional sports leagues.

(7) To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, projects consisting of facilities, at a site or sites within the State of New Jersey and either within or without the meadowlands complex, that are related to, incidental to, necessary for, or complementary to the accomplishment or purpose of any project of the authority authorized by this section, including any buildings, structures, properties and appurtenances related thereto, incidental thereto, necessary therefor, or complementary thereto, such projects to include driveways, roads, approaches, parking areas, parks, recreation areas, off-track and account wagering systems and facilities or any interest therein, vending facilities, restaurants, transportation structures, systems, and equipment, furnishings and all other structures and appurtenances related to, incidental to, necessary for, or complementary to the purposes of those projects.

(8) To establish, develop, acquire, construct, reconstruct, improve and otherwise effectuate for transfer to, and for use and operation by, Rutgers, the State University, either directly or indirectly through lessees, licensees or agents, facilities located or to be located on property owned, leased, or otherwise used by Rutgers, the State University, consisting of an upgraded and expanded football stadium and a new track and field, soccer and lacrosse facility and the buildings, structures, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to the football stadium and track and field, soccer and lacrosse facility, such facilities to include driveways, access roads, approaches, parking areas,

parks, recreation areas, vending facilities, restaurants, transportation structures, systems and equipment, furnishings and all other structures and appurtenances related or incidental to, necessary for, or complementary to the purposes of those facilities; provided however that construction shall not begin on the expansion of the seating capacity of Rutgers Stadium until the Commissioner of Transportation certifies that all funding necessary to complete the Route 18 project in Piscataway Township has been appropriated and construction has begun on the Route 18 project in Piscataway Township under the Department of Transportation's capital program.

(9) To acquire by purchase, lease or otherwise, and to develop, construct, operate, own, lease, manage, repair, reconstruct, restore, improve, enlarge or otherwise effectuate, either directly or through lessees, licensees or agents, a convention center project in the city of Atlantic City, Atlantic County, consisting of the existing convention hall and a new convention hall or center, and associated parking areas and railroad terminal facilities and including the leasing of adjacent land for hotel facilities. In connection therewith, the authority is authorized to:

(a) Assume existing leasehold or other contractual obligations pertaining to any such facilities or properties or to make provision for the payment or retirement of any debts and obligations of the governmental entity operating any such convention hall or center or of any bonds or other obligations payable from and secured by a lien on or pledge of the luxury tax revenues;

(b) Make loans or payments in aid of construction with respect to infrastructure and site development for properties located in the area between the sites of the existing convention hall and a new convention center or located contiguous to or across any public road which borders the area;

(c) Convert the existing convention hall or any facilities, structures or properties thereof, or any part thereof, not disposed of by the authority, to any sports, exposition, exhibition, or entertainment use or to use as a forum for public events or meetings, or to any other use which the authority shall determine to be consistent with its operation of the Atlantic City convention center project.

(10) To provide a feasibility study for the use and development of the existing convention center in the city of Asbury Park, county of Monmouth and to provide a feasibility study for the construction, use and development of a convention center or recreational facility in any other municipality.

(11) To provide funding to public or private institutions of higher education in the State to establish, develop, acquire, construct, reconstruct or improve facilities located or to be located on property owned, leased, or otherwise used by an institution, consisting of sports facilities and the

buildings, structures, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to those sports facilities, such facilities to include driveways, access roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and equipment, furnishings and all other structures and appurtenances related or incidental to, necessary for, or complementary to the purposes of those facilities.

(12) To acquire by purchase, lease, or otherwise, including all right, title and interest of the Greater Wildwood Tourism Improvement Development Authority in any property, and to develop, construct, operate, own, lease, manage, repair, reconstruct, restore, improve, enlarge or otherwise effectuate, either directly or through lessees, licensees or agents, a convention center facility in the City of Wildwood, Cape May County, consisting of and including any existing and acquired buildings, structures, properties and appurtenances and including restaurants, retail businesses, access roads, approaches, parking areas, transportation structures and systems, recreation areas, equipment, furnishings, vending facilities, and all other structures and appurtenances incidental to, necessary for, or complementary to the purpose of such Wildwood convention center facility. In connection therewith, the authority is expressly authorized to:

(a) assume any existing mortgages, leaseholds or other contractual obligations or encumbrances with respect to the site of the Wildwood convention center facility and any other existing and acquired buildings, structures, properties, and appurtenances;

(b) enter into agreements with a local public body or bodies providing for any necessary financial support or other assistance for the operation and maintenance of such Wildwood convention center facility from taxes or other sources of the local public body or bodies as shall be made available for such purposes;

(c) to the extent permitted by law and by the terms of the bonds or notes issued to finance the Wildwood convention center facility, transfer its ownership interest or other rights with respect to the convention center facility to another State authority or agency;

(d) upon payment of all outstanding bonds and notes issued therefore, transfer its ownership interest and other rights with respect thereto to such other public body as shall be authorized to own and operate such a facility; and

(e) convert any existing convention hall or any facilities, structures or properties thereof, or any part thereof, not disposed of by the authority, to any use which the authority shall determine to be consistent with the operation of the Wildwood convention center facility.

b. The authority, pursuant to the provisions of P.L.1971, c.137 (C.5:10-1 et seq.), is authorized (1) to make, as part of any of the projects, capital contributions to others for transportation and other facilities, and accommodations for the public's use of any of those projects, (2) to lease any part of any of those project sites not occupied or to be occupied by the facilities of any of those projects, for purposes determined by the authority to be consistent with or related to the purposes of those projects, including, but not limited to, hotels and other accommodations for transients and other facilities related to or incidental to any of those projects, and (3) to sell or dispose of any real or personal property, including, but not limited to, such portion of the site of any of those projects not occupied or to be occupied by the facilities of any of those projects, at not less than the fair market value of the property, except in the case of sale or disposition to the State, any political subdivision of the State or any agency or instrumentality of the State or any political subdivision of the State.

c. Revenues, moneys or other funds, if any, derived from the operation or ownership of the meadowlands complex, including the conduct of horse race meetings, 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) The costs of operation and maintenance of the meadowlands complex and reserves therefor;

(2) Principal, sinking fund installments and redemption premiums of and interest on any bonds or notes of the authority payable from such revenues, moneys or other funds and issued for the purposes of the meadowlands complex or for the purposes of refunding the same, including reserves and payments with respect to credit agreements therefor;

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

(4) Payments required to be made pursuant to section 18b.;

(5) Payments authorized to be made pursuant to section 18c.;

(6) Except to the extent payments with respect to bonds or notes are provided with priority in accordance with paragraph (2) of this subsection, payments required to be made in accordance with the resolution authorizing or relating to the issuance of bonds or notes of the authority, for the purposes of any project authorized by this act, including payments and reserves with respect to any bonds or notes of the authority with respect to the meadowlands complex which are not provided with priority in accordance with paragraph (2) of this subsection;

(7) Payments required to be made to repay any obligation incurred by the authority to the State;

(8) The balance remaining after application in accordance with the above shall be deposited in the General State Fund, provided that (a) there shall be appropriated for authorized State purposes from the amount so deposited that amount which shall be calculated by the State Treasurer to be the debt service savings realized with respect to the refinancing of the initial project as defined in section 1 of P.L.1973, c.286 (C.5:10-14.1) at the meadowlands complex, by the issuance of bonds of the authority guaranteed by the State, and (b) after such appropriation, 40% of any balance remaining from the amounts so deposited shall be appropriated to the Meadowlands Commission for any of its purposes authorized by P.L.1968, c.404, and any amendments or supplements thereto.

d. Revenues, moneys or other funds, if any, derived from the operation or ownership of any project other than the meadowlands complex, the Atlantic City convention center project, or the Wildwood convention center facility and other than a baseball stadium project or an office complex project located on the site of a baseball stadium shall be applied for such purposes, in such manner and subject to such conditions as shall be provided in the resolution authorizing or relating to the issuance of bonds or notes of the authority for the purposes of such project, and the balance, if any, remaining after such application may be applied, to the extent not contrary to or inconsistent with the resolution, in the following order (1) to the purposes of the meadowlands complex, unless otherwise agreed upon by the State Treasurer and the authority, (2) to the purposes of any other project of the authority; and, the balance remaining, if any, shall be deposited in the General Fund.

e. Revenues, moneys or other funds, if any, derived from the operation, ownership, or leasing of a baseball stadium project or an office complex project located on the site of a baseball stadium shall be applied for the purposes, in the manner and subject to the conditions as shall be provided in the resolution authorizing or relating to the issuance of bonds or notes of the authority for the purposes of a baseball stadium project or an office complex project located on the site of a baseball stadium, if any, and the balance, if any, remaining after such application shall be applied, to the extent not contrary to or inconsistent with the resolution, to the following purposes and in the following order:

(1) The costs of operation and maintenance of a baseball stadium project and an office complex project located on the site of a baseball stadium and reserves therefor;

(2) Payments made to repay the bonded indebtedness incurred by the authority for the purposes of a baseball stadium project or an office complex project located on the site of a baseball stadium;

(3) Payments equivalent to an amount required to be made by the State for payments in lieu of taxes pursuant to P.L.1977, c.272 (C.54:4-2.2a et seq.);

(4) The balance remaining after application in accordance with the above shall be deposited in the General Fund.

f. Revenues, moneys or other funds, if any, derived from the operation, ownership or leasing of the Atlantic City convention center project shall be applied to the costs of operating and maintaining the Atlantic City convention center project and to the other purposes set forth in this subsection as shall be provided by resolution of the authority.

Luxury tax revenues paid to the authority by the State Treasurer pursuant to section 14 of P.L.1991, c.375 (C.5:10-14.4) shall be deposited by the authority in a separate fund or account and applied to the following purposes and in the following order:

(1) To pay the principal, sinking fund installments and redemption premiums of and interest on any bonds or notes of the authority, including bonds or notes of the authority issued for the purpose of refunding bonds or notes, issued for purposes of (i) the initial acquisition of the existing properties which will constitute part of the Atlantic City convention center project, if the bonds or notes shall be payable under the terms of the resolution of the authority relating thereto from luxury tax revenues, or (ii) providing improvements, additions or replacements to the Atlantic City convention center project, if the bonds or notes shall be payable under the terms of the resolution of the authority relating thereto from luxury tax revenues; and to pay any amounts due from the authority under any credit agreement entered into by the authority in connection with the bonds or notes.

(2) To pay the costs of operation and maintenance of the Atlantic City convention center project.

(3) To establish and maintain a working capital and maintenance reserve fund for the Atlantic City convention center project in an amount as shall be determined by the authority to be necessary.

(4) To repay to the State those amounts paid by the State with respect to bonds or notes of the authority issued for the purposes of the Atlantic City convention center project.

(5) The balance of any luxury tax revenues not required for any of the foregoing purposes and remaining at the end of any calendar year shall be paid to the State Treasurer for application to purposes in the city of Atlantic City pursuant to section 5 of P.L.1981, c.461 (C.40:48-8.30a).

The authority may pledge the luxury tax revenues paid to it as provided for in section 14 of P.L.1991, c.375 (C.5:10-14.4) as security for the payment of the principal of and interest or premium on its bonds or notes issued for the purposes set forth above in paragraph (1) of this subsection f. in the same manner, to the same extent and with the same effect as the pledge of any of its other revenues, receipts and funds authorized by P.L.1971, c.137 (C.5:10-1 et seq.).

g. Revenues, moneys or other funds, if any, derived from the ownership or operation of the Wildwood convention center facility shall be applied to the costs of operating and maintaining the Wildwood convention center facility and to the other purposes set forth in this subsection as shall be provided by resolution of the authority.

The tourism related tax revenues paid to the authority pursuant to subsection f. of section 14 of P.L.1992, c.165 (C.40:54D-14) shall be deposited by the authority in a separate fund or account and applied to any or all of the following purposes pursuant to an allocation of funds approved by the State Treasurer in writing and in advance of any application of such funds:

(1) to pay amounts due with respect to any obligations transferred to the authority pursuant to section 17 of P.L.1997, c.273 (C.40:54D-25.1) pertaining to the Wildwood convention center facility;

(2) to repay to the State those amounts paid with respect to bonds or notes of the authority issued for the purposes of the Wildwood convention center facility;

(3) to pay the cost of operation and maintenance reserve for the Wildwood convention center facility;

(4) to establish and maintain a working capital and maintenance of the Wildwood convention center facility.

The balance, if any, of any tourism related tax revenues not allocated to any of the purposes set forth in the previous paragraphs and remaining at the end of the calendar year shall be paid to the State Treasurer for deposit in the General Fund.

39. Section 18 of P.L.1971, c.137 (C.5:10-18) is amended to read as follows:

C.5:10-18 Tax exemption; projects and property of authority; bonds or notes; payments in-lieu-of property taxes.

18. a. All projects and other property of the authority, except an off-track wagering facility or account wagering system facility established pursuant to P.L.2001, c.199, is hereby 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; provided, however, that when any part of the project site not occupied or to be occupied by facilities of the project 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 the appurtenances thereto shall be listed as the property of the lessee thereof, or his assignee, and be assessed and taxed as real estate. All bonds or notes issued pursuant to the act are hereby declared to be issued by a body corporate and public of the State and for an essential public and governmental purpose and such 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 such bonds or notes, or interest thereon, shall at all times 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 for the meadowlands complex the authority annually shall make payments in-lieu-of-taxes to the municipality in which such property is located in an amount computed in each year with respect to each such municipality by multiplying the total amount to be raised by real property taxation in each such year by a fraction, the numerator of which is the amount of real property taxes assessed against the property acquired by the authority in the tax year in which this act becomes effective and the denominator of which is the total amount to be raised by real property taxation in such municipality in the tax year in which this act becomes effective. Such payments shall be made in each year commencing with the first year subsequent to the year in which such real property shall have been converted from a taxable to an exempt status by reason of acquisition thereof by the authority.

c. The authority is further authorized and empowered to enter into any agreement or agreements with the Meadowlands Commission or with any county or municipality located in whole or part within the Hackensack meadowlands 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 meadowlands complex or to pay amounts to be used by such commission, county or municipality in furtherance of the development of the Hackensack meadowlands, including the meadowlands complex. The commission and every such county and municipality is authorized and empowered to enter into such agreements with the authority and to accept payments which the authority makes thereunder.

d. All payments to municipalities pursuant to subsections b. and c. shall be treated as payments in-lieu-of-property taxes for all purposes of article 9 of P.L.1968, c.404 (C.13:17-60 to 13:17-76).

40. Section 2 of P.L.1993, c.229 (C.26:2-169) is amended to read as follows:

C.26:2-169 Criteria for compulsive gambling programs; grants.

2. The Department of Health and Senior Services shall develop criteria which prevention, education and treatment programs for compulsive gamblers shall meet in order to become eligible for a grant from the funds made available for such programs pursuant to section 145 of P.L.1977, c.110 (C.5:12-145). The department shall also develop a formula for the distribution of available funds which will result in an equitable distribution among the programs which meet the eligibility criteria and apply for grants.

The department shall submit a report to the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or their successors, describing the criteria developed pursuant to this section and detailing the amount of grants distributed and the names of the programs receiving grants. The department shall submit the report annually to both committees.

41. Sections 30-38 and 40 of this act shall take effect immediately and the remaining sections shall take effect on the 180th day after enactment, but the commission shall take such anticipatory administrative action in advance as shall be necessary for the implementation of the act

Approved August 5, 2001.

CHAPTER 200

AN ACT concerning standardized pharmacy identification cards and supplementing Title 17B of the New Jersey Statutes.

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

C.17B:30-35 Definitions relative to standardized pharmacy identification cards.

1. As used in this act:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State.

"Health benefits plan" means: a health benefits plan that is delivered or issued for delivery in this State by or through a carrier; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the "Employee Retirement Income Security Act of 1974," Pub.L.93-406 (29 U.S.C. s.1001 et seq.), or by any waiver of or other exception to that act provided under federal law or regulation. "Health benefits plan" shall not include accident-only insurance; credit accident and health insurance; Medicare supplement insurance; Medicaid fee-for-service; disability income insurance; long-term care insurance; specified disease insurance; dental or vision care plan; hospital indemnity insurance; coverage issued as a supplement to liability insurance; medical payments under automobile or homeowners insurance; or insurance under which benefits are payable without regard to fault and that are statutorily required to be included in a liability policy or equivalent self-insurance program.

C.17B:30-36. Issuance of standardized pharmacy identification information, card to primary insured.

2. a. A carrier, multiple employer welfare arrangement or other health benefits plan provider, or its agents, contractors or administrators, including but not limited to a pharmacy benefits manager or third party administrator for a self-insured health benefits plan, that provides, administers or manages coverage for prescription drugs provided on an outpatient basis, shall issue or require the issuance to the primary insured of a card or other technology that includes standardized pharmacy identification information.

b. The card shall comply with the standards set forth in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide in effect at the time of card issuance, or, at a minimum, contain the following information:

- (1) the name or identification number of the health benefits plan, when required for proper claims adjudication;
- (2) the American National Standards Institute International Identification Number assigned to the administrator or pharmacy benefits manager of the health benefits plan, labeled as RxBIN, when required for proper claims adjudication;
- (3) the processor control number, labeled as RxPCN, when required for proper claims adjudication;
- (4) the insured's group number, labeled as RxGRP, when required for proper claims adjudication;
- (5) the insured's identification number;
- (6) the insured's name; except that, if a separate card is issued for another person included under the primary insured's coverage, the name of

the covered person to whom the card is issued may be listed instead of the name of the primary insured;

(7) the telephone number that providers may call for pharmacy benefits assistance; and

(8) any other information necessary for proper claims adjudication, except for information provided on the prescription as required by law or regulation.

C.17B:30-37 Exceptions for issuance of card.

3. a. A carrier, multiple employer welfare arrangement or other health benefits plan provider shall not be required to issue a pharmacy identification card separate from another identification card issued to an insured under a health benefits plan if the identification card contains the information required pursuant to section 2 of this act.

b. A carrier, multiple employer welfare arrangement or other health benefits plan provider may use data elements that are required by State or federal regulations adopted pursuant to the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, in place of the information required pursuant to section 2 of this act.

C.17B:30-38 Provision of new pharmacy identification card.

4. A carrier, multiple employer welfare arrangement or other health benefits plan provider shall provide each primary insured with a new pharmacy identification card within a reasonable time, not to exceed 180 days, after a change in the insured's coverage that changes the information required to be on the card pursuant to section 2 of this act, if the issuance of a new card is required for proper claims adjudication. The carrier, multiple employer welfare arrangement or other health benefits plan provider shall not, however, be required to issue a new card more than once in a calendar year. Except as required by this section, a carrier, multiple employer welfare arrangement or other health benefits plan provider shall not be required to reissue a pharmacy identification card with any particular frequency.

C.17B:30-39 Rules, regulations.

5. The Commissioner of Banking and Insurance shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of this act.

6. This act shall take effect on September 1, 2002 and shall apply to policies or contracts issued or renewed after the effective date.

Approved August 8, 2001.

CHAPTER 201

AN ACT concerning the service credit of certain members of the Police and Firemen's Retirement System of New Jersey and the payment of certain costs, amending P.L.1944, c.255 and supplementing P.L.1993, c.247 (C.43:16A-3.8 et seq.).

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

C.43:16A-3.14 Full credit toward PFRS benefits for transferred PERS service.

1. a. Notwithstanding the provisions of P.L.1993, c.247 (C.43:16A-3.8 et seq.) to the contrary, a member or retiree of the Police and Firemen's Retirement System of New Jersey (PFRS), established pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.), who was eligible to become a member of the PFRS and transferred membership from the Public Employees' Retirement System of New Jersey (PERS), established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), to the PFRS pursuant to section 1 of P.L.1993, c.247 (C.43:16A-3.8) shall receive full credit toward benefits under PFRS for the transferred PERS service.

b. The PFRS shall reimburse to any member or retiree who agreed to pay the full cost of the accrued liability for the transferred PERS credit as provided in section 3 of P.L.1993, c.247 (C.43:16A-3.10) the cost of that credit purchase.

2. Section 15 of P.L.1944, c.255 (C.43:16A-15) is amended to read as follows:

C.43:16A-15 Contributions, expenses of administration.

15. (1) The contributions required for the support of the retirement system shall be made by members and their employers.

(2) The uniform percentage contribution rate for members shall be 8.5% of compensation.

(3) (Deleted by amendment, P.L.1989, c.204).

(4) Upon the basis of the tables recommended by the actuary which the board adopts and regular interest, the actuary shall compute annually, beginning as of June 30, 1991, the amount of contribution which shall be the normal cost as computed under the projected unit credit method attributable to service rendered under the retirement system for the year beginning on July 1 immediately succeeding the date of the computation. This shall be known as the "normal contribution."

(5) (Deleted by amendment, P.L.1989, c.204).

(6) (Deleted by amendment, P.L.1994, c.62.)

(7) Each employer shall cause to be deducted from the salary of each member the percentage of earnable compensation prescribed in subsection (2) of this section. To facilitate the making of deductions, the retirement system may modify the amount of deduction required of any member by an amount not to exceed 1/10 of 1% of the compensation upon which the deduction is based.

(8) The deductions provided for herein shall be made notwithstanding that the minimum salary provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by such person during the period covered by such payment, except as to the benefits provided under this act. The chief fiscal officer of each employer shall certify to the retirement system in such manner as the retirement system may prescribe, the amounts deducted; and when deducted shall be paid into said annuity savings fund, and shall be credited to the individual account of the member from whose salary said deduction was made.

(9) With respect to employers other than the State, upon the basis of the tables recommended by the actuary which the board adopts and regular interest, the actuary shall compute the amount of the accrued liability as of June 30, 1991 under the projected unit credit method, which is not already covered by the assets of the retirement system, valued in accordance with the asset valuation method established in this section. Using the total amount of this unfunded accrued liability, the actuary shall compute the initial amount of contribution which, if the contribution is increased at a specific rate and paid annually for a specific period of time, will amortize this liability. The State Treasurer shall determine, upon the advice of the Director of the Division of Pensions and Benefits, the board of trustees and the actuary, the rate of increase for the contribution and the time period for full funding of this liability, which shall not exceed 40 years on initial application of this section as amended by this act, P.L.1994, c.62. This shall be known as the "accrued liability contribution." Any increase or decrease in the unfunded accrued liability as a result of actuarial losses or gains for the 10 valuation years following valuation year 1991 shall serve to increase or decrease, respectively, the unfunded accrued liability contribution. Thereafter, any increase or decrease in the unfunded accrued liability as a result of actuarial losses or gains for subsequent valuation years shall serve to increase or decrease, respectively, the amortization period for the unfunded accrued liability, unless an increase in the amortization period will cause it to exceed 30 years. If an increase in the amortization period as a result of actuarial losses for a valuation year would exceed 30 years, the

accrued liability contribution shall be computed for the valuation year in the same manner provided for the computation of the initial accrued liability contribution under this section.

With respect to the State, upon the basis of the tables recommended by the actuary which the board adopts and regular interest, the actuary shall annually determine if there is an amount of the accrued liability, computed under the projected unit credit method, which is not already covered by the assets of the retirement system, valued in accordance with the asset valuation method established in this section. This shall be known as the "unfunded accrued liability." If there was no unfunded accrued liability for the valuation period immediately preceding the current valuation period, the actuary, using the total amount of this unfunded accrued liability, shall compute the initial amount of contribution which, if the contribution is increased at a specific rate and paid annually for a specific period of time, will amortize this liability. The State Treasurer shall determine, upon the advice of the Director of the Division of Pensions and Benefits, the board of trustees and the actuary, the rate of increase for the contribution and the time period for full funding of this liability, which shall not exceed 30 years. This shall be known as the "accrued liability contribution." Thereafter, any increase or decrease in the unfunded accrued liability as a result of actuarial losses or gains for subsequent valuation years shall serve to increase or decrease, respectively, the amortization period for the unfunded accrued liability, unless an increase in the amortization period will cause it to exceed 30 years. If an increase in the amortization period as a result of actuarial losses for a valuation year would exceed 30 years, the accrued liability contribution shall be computed for the valuation year in the same manner provided for the computation of the initial accrued liability contribution under this section. The State may pay all or any portion of its unfunded accrued liability under the retirement system from any source of funds legally available for the purpose, including, without limitation, the proceeds of bonds authorized by law for this purpose.

The value of the assets to be used in the computation of the contributions provided for under this section for valuation periods shall be the value of the assets for the preceding valuation period increased by the regular interest rate, plus the net cash flow for the valuation period (the difference between the benefits and expenses paid by the system and the contributions to the system) increased by one half of the regular interest rate, plus 20% of the difference between this expected value and the full market value of the assets as of the end of the valuation period. This shall be known as the "valuation assets." Notwithstanding the first sentence of this paragraph, the valuation assets for the valuation period ending June 30, 1995 shall be the full market value of the assets as of that date and, with respect to the

valuation assets allocated to the State, shall include the proceeds from the bonds issued pursuant to the "Pension Bond Financing Act of 1997," P.L.1997, c.114 (C.34:1B-7.45 et seq.), paid to the system by the New Jersey Economic Development Authority to fund the unfunded accrued liability of the system. Notwithstanding the first sentence of this paragraph, the percentage of the difference between the expected value and the full market value of the assets to be added to the expected value of the assets for the valuation period ending June 30, 1998 for the State shall be 100% and for other employers shall be 57% plus such additional percentage as is equivalent to \$150,000,000. Notwithstanding the first sentence of this paragraph, the amount of the difference between the expected value and the full market value of the assets to be added to the expected value of the assets for the valuation period ending June 30, 1999 shall include an additional amount of the market value of the assets sufficient to fund (1) the unfunded accrued liability for the supplementary "special retirement" allowances provided under subsection b. of section 16 of P.L.1964, c.241 (C.43:16A-11.1) and (2) the unfunded accrued liability for the full credit toward benefits under the retirement system for service credited in the Public Employees' Retirement System and transferred pursuant to section 1 of P.L.1993, c.247 (C.43:16A-3.8) and the reimbursement of the cost of any credit purchase pursuant to section 3 of P.L.1993, c.247 (C.43:16A-3.10) provided under section 1 of P.L.2001, c.201 (C.43:16A-3.14).

"Excess valuation assets" means, with respect to the valuation assets allocated to the State, the valuation assets allocated to the State for a valuation period less the actuarial accrued liability of the State for the valuation period, and beginning with the valuation period ending June 30, 1998, less the present value of the expected additional normal cost contributions attributable to the provisions of P.L.1999, c.428 (C.43:16A-15.8 et al.) payable on behalf of the active members employed by the State as of the valuation period over the expected working lives of the active members in accordance with the tables of actuarial assumptions applicable to the valuation period, if the sum is greater than zero. "Excess valuation assets" means, with respect to the valuation assets allocated to other employers, the valuation assets allocated to the other employers for a valuation period less the actuarial accrued liability of the other employers for the valuation period, excluding the unfunded accrued liability for early retirement incentive benefits pursuant to P.L.1993, c.99 for the other employers, and beginning with the valuation period ending June 30, 1998, less the present value of the expected additional normal cost contributions attributable to the provisions of P.L.1999, c.428 (C.43:16A-15.8 et al.) payable on behalf of the active members employed by other employers as of the valuation period over the expected working lives of the active

members in accordance with the tables of actuarial assumptions applicable to the valuation period, if the sum is greater than zero.

If there are excess valuation assets allocated to the State or to the other employers for the valuation period ending June 30, 1995, the normal contributions payable by the State or by the other employers for the valuation periods ending June 30, 1995, and June 30, 1996 which have not yet been paid to the retirement system shall be reduced to the extent possible by the excess valuation assets allocated to the State or to the other employers, respectively, provided that with respect to the excess valuation assets allocated to the State, the General Fund balances that would have been paid to the retirement system except for this provision shall first be allocated as State aid to public schools to the extent that additional sums are required to comply with the May 14, 1997 decision of the New Jersey Supreme Court in *Abbott v. Burke*.

If there are excess valuation assets allocated to the other employers for the valuation period ending June 30, 1998, the accrued liability contributions payable by the other employers for the valuation period ending June 30, 1997 shall be reduced to the extent possible by the excess valuation assets allocated to the other employers.

If there are excess valuation assets allocated to the State or to the other employers for a valuation period ending after June 30, 1998, the State Treasurer may reduce the normal contribution payable by the State or by other employers for the next valuation period as follows:

(1) for valuation periods ending June 30, 1996 through June 30, 2000, to the extent possible by up to 100% of the excess valuation assets allocated to the State or to the other employers, respectively;

(2) for the valuation period ending June 30, 2001, to the extent possible by up to 84% of the excess valuation assets allocated to the State or to the other employers, respectively;

(3) for the valuation period ending June 30, 2002, to the extent possible by up to 68% of the excess valuation assets allocated to the State or to the other employers, respectively; and

(4) for valuation periods ending on or after June 30, 2003, to the extent possible by up to 50% of the excess valuation assets allocated to the State or to the other employers, respectively.

Notwithstanding the discretion provided to the State Treasurer in the previous paragraph to reduce the amount of the normal contribution payable by employers other than the State, the State Treasurer shall reduce the amount of the normal contribution payable by employers other than the State by \$150,000,000 in the aggregate for the valuation period ending June 30, 1998, and then the State Treasurer may reduce further pursuant to the

provisions of the previous paragraph the normal contribution payable by such employers for that valuation period.

The normal and accrued liability contributions shall be certified annually by the retirement system and shall be included in the budget of the employer and levied and collected in the same manner as any other taxes are levied and collected for the payment of the salaries of members.

(10) The treasurer or corresponding officer of the employer shall pay to the State Treasurer no later than April 1 of the State's fiscal year in which payment is due the amount so certified as payable by the employer, and shall pay monthly to the State Treasurer the amount of the deductions from the salary of the members in the employ of the employer, and the State Treasurer shall credit such amount to the appropriate fund or funds, of the retirement system.

If payment of the full amount of the employer's obligation is not made within 30 days of the due date established by this act, interest at the rate of 10% per annum shall commence to run against the unpaid balance thereof on the first day after such 30th day.

If payment in full, representing the monthly transmittal and report of salary deductions, is not made within 15 days of the due date established by the retirement system, interest at the rate of 10% per annum shall commence to run against the total transmittal of salary deductions for the period on the first day after such 15th day.

(11) The expenses of administration of the retirement system shall be paid by the State of New Jersey. Each employer shall reimburse the State for a proportionate share of the amount paid by the State for administrative expense. This proportion shall be computed as the number of members under the jurisdiction of such employer bears to the total number of members in the system. The pro rata share of the cost of administrative expense shall be included with the certification by the retirement system of the employer's contribution to the system.

(12) Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any pension or other benefits on account of the employees or beneficiaries of any employer participating in the retirement system, for which reserves have not been previously created from funds, contributed by such employer or its employees for such benefits.

(13) (Deleted by amendment, P.L.1992, c.125.)

(14) Commencing with valuation year 1991, with payment to be made in Fiscal Year 1994, the Legislature shall annually appropriate and the State Treasurer shall pay into the pension accumulation fund of the retirement system an amount equal to 1.1% of the compensation of the members of the

system for the valuation year to fund the benefits provided by section 16 of P.L.1964, c.241 (C.43:16A-11.1), as amended by P.L.1979, c.109.

(15) If the valuation assets are insufficient to fund the normal and accrued liability costs attributable to P.L.1999, c.428 (C.43:16A-15.8 et al.) as provided hereinabove, the normal and unfunded accrued liability contributions required to fund these costs for the State and other employers shall be paid by the State.

(16) The savings realized as a result of the amendments to this section by P.L.2001, c.44 in the payment of normal contributions computed by the actuary for the valuation periods ending June 30, 1998 for employers other than the State shall be used solely and exclusively by a county or municipality for the purpose of reducing the amount that is required to be raised by the local property tax levy by the county for county purposes or by the municipality for municipal purposes, as appropriate. The Director of the Division of Local Government Services in the Department of Community Affairs shall certify for each year that each county or municipality has complied with the requirements set forth herein. If the director finds that a county or municipality has not used the savings solely and exclusively for the purpose of reducing the amount that is required to be raised by the local property tax levy by the county for county purposes or by the municipality for municipal purposes, as appropriate, the director shall direct the county or municipal governing body, as appropriate, to make corrections to its budget.

3. This act shall take effect 90 days following enactment

Approved August 8, 2001.

CHAPTER 202

AN ACT concerning prejudgment interest on claims arising from certain State contracts and amending N.J.S.59:13-8.

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

1. N.J.S.59:13-8 is amended to read as follows:

Interest on judgments.

59:13-8. Interest on judgments. No interest shall accrue prior to the entry of judgment in a court of competent jurisdiction, except that the court,

in its discretion, may award prejudgment interest on the whole or part of a judgment arising out of or relating to claims for the construction or installation of improvements to real property in accordance with principles of equity.

2. This act shall take effect immediately and shall apply to any claim that accrues after the date of enactment.

Approved August 8, 2001.

CHAPTER 203

AN ACT concerning opportunities for world language instruction and credit toward high school graduation requirements for certain world language courses and supplementing chapter 35 of Title 18A of the New Jersey Statutes.

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

1. The Legislature finds and declares that:
 - a. New Jersey is home to over 100 ethnic groups and there are approximately 125 different world languages used by persons living in this State to describe, interpret and give meaning to their world.
 - b. We live in a world that is increasingly interdependent creating the need for educated citizens who are multilingual and who have multicultural sensitivities.
 - c. Persons engaging in commerce in this State are finding that their markets are no longer limited to an area where one language is predominant, but that markets in this State and in the United States and in many different parts of the world require the use of different world languages and an understanding of the cultures of which those languages are an integral part to effectively carry out commercial transactions.
 - d. In such a world it is important to provide a variety of opportunities for public school pupils to learn different languages and to provide recognition, including credit toward a high school diploma, for those pupils who take advantage of these opportunities.
 - e. The resources of local school districts are limited and, as such, it is not practicable to expect local school districts to develop and teach the variety of world languages in which local community groups may wish their children and youth to receive instruction.

f. Many of these local community groups are well equipped to provide instruction in a world language and the culture which forms, shapes and provides meaning for that world language.

g. It is therefore in the interest of the people of this State that the Department of Education establish a committee to develop a plan which would provide students in the public schools the opportunity to receive instruction in and graduation credit for a world language not taught in the public school district.

2. There is created in the Department of Education the World Language Instruction Committee. The committee shall consist of 15 members selected as follows: the Commissioner of Education or the commissioner's designee; two members to be appointed by the President of the Senate, who shall not be of the same political party; two members to be appointed by the Speaker of the General Assembly, who shall not be of the same political party; seven public members appointed by the Governor, three of whom shall be from the higher education academic community with experience in world language instruction; and one member each from the New Jersey Education Association; the New Jersey Principals and Supervisors Association; and the New Jersey School Boards Association.

3. All appointments shall be made within 30 days after the effective date of this act. Vacancies in the membership of the committee shall be filled in the same manner as the original appointments were made. Members of the committee shall serve without compensation.

4. The Commissioner of Education or the commissioner's designee, shall serve as the committee's chair and shall convene the committee within 30 days after the appointment of its members. The committee shall select a vice-chair from among its members and a secretary who need not be a member of the committee.

5. The committee shall develop a plan which provides public school pupils with opportunities for instruction in a wide variety of world languages, including instruction in world languages provided by qualified entities other than school districts. The committee shall consider and include proposals in the plan regarding, but not limited to, the following items:

- a. the identification of Statewide proficiency standards for world languages;
- b. the use of other world language programs currently in operation in other states;

- c. procedures for use by a local school district in working with another entity desiring to provide instruction in a world language to a resident pupil of that district;
- d. identification of the cost elements of the plan for the State and local districts; and
- e. implementation of the plan as a Statewide or a pilot program.

6. Staff and related support services shall be provided to the committee by the Department of Education. The committee shall also be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal board, bureau, commission or agency as it may require and as may be available to it for its purposes.

7. The committee may meet and hold hearings at the place or places it designates and shall issue its plan to the State Board of Education not later than eight months after the effective date of this act.

C.18A:35-4.18 Credit for world language course not offered by public school.

8. A pupil who is enrolled in a public high school within the State who wishes to take a world language course not offered in the resident public school district may complete and receive credit toward high school graduation for a world language course offered by a religious organization or any other nonpublic school organization or entity. In order to receive credit for the course, the pupil shall meet local district proficiency requirements.

9. This act shall take effect immediately, except section 8 shall take effect July 1 next following submission of the committee's plan to the State Board of Education. Sections 1 through 7 shall expire 30 days after the committee submits its plan to the State Board of Education.

Approved August 8, 2001.

CHAPTER 204

AN ACT concerning the fire safety commission and amending P.L.1983, c.382.

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

1. Section 5 of P.L.1983, c. 382 (C.52:27D-25e) is amended to read as follows:

C.52:27D-25e Fire safety commission.

5. a. To assist and advise the commissioner in the administration of this act, there is created in the Department of Community Affairs a fire safety commission consisting of 23 members. The commission shall consist of: two members of the Senate, appointed by the President of the Senate, who shall not be both of the same political party; two members of the General Assembly, appointed by the Speaker of the General Assembly, who shall not be both of the same political party; nine citizens of the State, appointed jointly by the President of the Senate and the Speaker of the General Assembly, no more than five of whom shall be of the same political party, including a representative of a volunteer fire organization, a representative of a construction labor organization, a representative of the fire insurance industry, a representative of fire suppression system manufacturers or installers, a representative of the New Jersey Apartment Association or the rental property industry, a representative of the construction industry, a representative of the International Association of Fire Chiefs, a municipal construction official, and a representative of the New Jersey State Fire Prevention and Protection Association; 10 citizens of the State appointed by the Governor, no more than five of whom shall be of the same political party, and who shall include a representative of the New Jersey State Firemen's Mutual Benevolent Association, a representative of the New Jersey League of Municipalities, two representatives of the volunteer fire service, one of whom shall be a representative of the New Jersey State Volunteer Firemen's Association, a representative of the New Jersey State Fire Chiefs' Association, a representative of the New Jersey Paid Fire Chiefs' Association, a representative of the Fire Fighters' Association of New Jersey, a representative of the New Jersey State Association of Fire Districts, a municipal fire protection subcode official, and a chief administrator of the fire department of a municipality with a population of 100,000 or more, according to the most recent federal decennial census. The members of the Senate and General Assembly appointed to the commission shall serve for terms which shall be for the legislative session for which they were elected. Of the seven members first appointed jointly by the President of the Senate and the Speaker of the General Assembly, three shall be appointed for terms of five years, three shall be appointed for terms of four years, and one shall be appointed for a term of three years. The members appointed pursuant to P.L.2001, c.204 shall be appointed for an initial term of five years. Of the eight members first appointed by the Governor, three shall be appointed for terms of five years, three shall be appointed for a term

of four years, and two shall be appointed for terms of three years. The first representative of the New Jersey State Association of Fire Districts appointed by the Governor shall be for a term of three years. Thereafter, members of the fire safety commission, except as provided above for members of the Legislature, shall be appointed for terms of five years. Vacancies on the commission shall be filled, in the same manner as the original appointment but for the unexpired term. Members may be removed by the appointing authority for cause.

b. Members of the fire safety commission shall serve without compensation but shall be entitled to reimbursement for expenses incurred in performance of their duties, within the limits of any funds appropriated or otherwise made available for that purpose.

c. To advise and assist the fire safety commission in the performance of its responsibilities under this act, there are created four advisory councils, one in each of the following subject areas: the "Uniform Fire Safety Act"; training and education which shall be comprised of at least 60% of the representatives of the volunteer fire service; statistics and information; and master planning and research. Additional advisory councils shall be created by the fire safety commission as it deems appropriate. Each advisory council shall consist of one member of the fire safety commission, who shall be chairman, and as many citizens who are knowledgeable and experienced in matters related to the particular subject as the fire safety commission shall appoint. Members of the advisory councils shall serve without compensation and at the pleasure of the fire safety commission.

2. This act shall take effect immediately.

Approved August 8, 2001.

CHAPTER 205

AN ACT concerning minority and multicultural health, amending the title and body of P.L.1991, c.401 and making an appropriation.

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

Title amended.

1. The title of P.L.1991, c.401 is amended to read as follows:
AN ACT establishing the New Jersey Office on Minority and Multicultural Health.

2. Section 1 of P.L.1991, c.401 (C.26:2-160) is amended to read as follows:

C.26:2-160 Findings, declarations relative to minority and multicultural health.

1. The Legislature finds and declares that:
 - a. There are dramatic differences in death, disease and injury rates between White and racial and ethnic minority populations in the State, with especially wide and persistent disparities in the incidence of cancer, cardiovascular disease and stroke, chemical dependency, diabetes, asthma, homicide, suicide, accidental injury, infant mortality, child immunization rates and HIV/AIDS;
 - b. There is a clear need for a collaborative State effort to address the wide disparity in death, disease and injury rates through a New Jersey Office on Minority and Multicultural Health, renamed from the New Jersey Office on Minority Health established pursuant to P.L.1991, c.401 (C.26:2-160 et seq.); and
 - c. The New Jersey Office on Minority and Multicultural Health shall seek to identify and develop innovative projects which will eliminate the gap between the health status of White and racial and ethnic minority populations in this State, and to coordinate current State programs which seek to address minority racial and ethnic health concerns, with the ultimate goal of enabling all members of racial and ethnic minority populations in this State to have access to high-quality health care.

3. Section 2 of P.L.1991, c.401 (C.26:2-161) is amended to read as follows:

C.26:2-161 New Jersey Office on Minority and Multicultural Health.

2. a. There is established the New Jersey Office on Minority and Multicultural Health in the Department of Health and Senior Services.
 - b. Whenever the term "New Jersey Office on Minority Health" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the "New Jersey Office on Minority and Multicultural Health."

4. Section 3 of P.L.1991, c.401 (C.26:2-162) is amended to read as follows:

C.26:2-162 Duties of the office.

3. The office shall:
 - a. Provide grants to community-based organizations to conduct special research, demonstration and evaluation projects for targeted at-risk racial and ethnic minority populations and to support ongoing community-based

programs that are designed to reduce or eliminate racial and ethnic health disparities in the State;

b. Develop and implement model public and private partnerships in racial and ethnic minority communities for health awareness campaigns and to improve the access, acceptability and use of public health services;

c. Serve as an information and resource center for racial and ethnic minority specific health information and data and develop a clearinghouse to collate and organize data on a county-by-county basis and disseminate it upon request to interested parties;

d. Review, recommend and develop culturally appropriate health education materials;

e. Provide assistance to local school districts to develop programs in elementary and secondary schools which stress good nutrition and healthy lifestyles;

f. Function as an advocate for the adoption and implementation of effective measures to improve the health of racial and ethnic minority populations in this State, which measures should lead to the elimination of disparities among the various racial and ethnic populations of this State with respect to access to high-quality health care, utilization of health care services and health status;

g. Improve existing data systems to ensure that the health information that is collected includes specific race and ethnicity identifiers;

h. Review the programs of the Departments of Health and Senior Services, Human Services, Community Affairs and Education and any other department of State government, as appropriate, that concern multicultural or minority health and make recommendations to the departments that will enable them to better coordinate and improve the effectiveness of their efforts;

i. Develop a Statewide plan for increasing the number of racial and ethnic minority health care professionals which includes recommendations for the financing mechanisms and recruitment strategies necessary to carry out the plan;

j. Work collaboratively with colleges of medicine and dentistry in this State and other health care professional training programs to develop cultural and language competency courses that are designed to address the problem of racial and ethnicity disparities in health care access, utilization, treatment decisions, quality and outcomes;

k. Develop recommendations for the most effective means of providing outreach to racial and ethnic minority communities throughout the State to ensure their maximum participation in publicly funded health benefits programs;

1. Seek to establish a Statewide alliance with community-based agencies and organizations, health care facilities, health care provider organizations, managed care organizations and pharmaceutical manufacturers to promote the objectives of the office; and

m. Evaluate multicultural or racial and ethnic minority health programs in other states to assess their efficacy and potential for replication in this State and make recommendations regarding the adoption of such programs, as appropriate.

5. Section 4 of P.L.1991, c.401 (C.26:2-163) is amended to read as follows:

C.26:2-163 Powers of the office.

4. The office is authorized to:

a. Adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), concerning the operation of the office and other matters that may be necessary to carry out the purposes of this act;

b. Maintain offices at such places within the State as it may designate;

c. Employ a director and other personnel as may be necessary. The director shall be appointed by the Commissioner of Health and Senior Services and shall serve at the pleasure of the commissioner during the commissioner's term of office and until the appointment and qualification of the director's successor. The director shall devote his entire time to the duties of the position and shall receive a salary as provided by law;

d. Apply for and accept any grant of money from the federal government, private foundations or other sources, which may be available for programs related to multicultural or minority health;

e. Serve as the designated State agency for receipt of federal funds specifically designated for multicultural or racial and ethnic minority health programs; and

f. Enter into contracts with individuals, organizations, and institutions necessary for the performance of its duties under this act. (cf: P.L.1991, c.401, s.4)

6. Section 5 of P.L.1991, c.401 (C.26:2-164) is amended to read as follows:

C.26:2-164 New Jersey Office on Minority or Multicultural Health Advisory Commission.

5. There is established a New Jersey Office on Minority and Multicultural Health Advisory Commission.

The commission shall consist of nine members, including the Commissioner of Health and Senior Services or his designee, who shall serve ex

officio, and eight public members who are residents of the State and who shall be appointed as follows: one member who is a health care professional shall be appointed by the President of the Senate; one member who is a health care professional shall be appointed by the Speaker of the General Assembly; and six members, at least two of whom are health care professionals, at least one of whom represents health care facilities and at least one of whom represents the health insurance industry, shall be appointed by the Governor with the advice and consent of the Senate.

The term of office of each public member shall be three years, but of the members first appointed, two shall be appointed for a term of one year, three shall be appointed for a term of two years and three shall be appointed for a term of three years. A member shall hold office for the term of his appointment and until his successor has been appointed and qualified. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member of the commission is eligible for reappointment.

The public members of the commission shall not receive any compensation for their services, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the commission, within the limits of funds available to the commission.

The members of the commission shall annually elect a chairman and a vice-chairman from among the public members and may select a secretary, who need not be a member of the commission.

The New Jersey Office on Minority and Multicultural Health shall provide such staff and assistance as the commission requires to carry out its work.

7. Section 6 of P.L.1991, c.401 (C.26:2-165) is amended to read as follows:

C.26:2-165 Duties of advisory commission.

6. The advisory commission shall:
 - a. Review and make recommendations to the New Jersey Office on Minority and Multicultural Health on any rules, regulations and policies proposed by the office;
 - b. Advise the office on the awarding of grants and development of programs and services required pursuant to this act;
 - c. Advise the office on the needs, priorities, programs and policies relating to multicultural or racial and ethnic minority health in this State; and
 - d. Provide any other assistance to the office, as may be requested by the director.

The commission may accept from any governmental department or agency, public or private body or any other source grants or contributions to be used in carrying out its responsibilities under this act.

8. Section 8 of P.L.1991, c.401 (C.26:2-167) is amended to read as follows:

C.26:2-167 Assistance of public agencies.

8. The office is entitled to call to its assistance, and avail itself of, the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. All departments, agencies and divisions are authorized and directed, to the extent not inconsistent with law, to cooperate with the New Jersey Office on Minority and Multicultural Health.

9. a. There is appropriated \$1,500,000 from the General Fund to the Office on Minority and Multicultural Health in the Department of Health and Senior Services to carry out its responsibilities pursuant to this act. The monies appropriated pursuant to this act shall supplement any funding currently available to the office.

b. It is the intent of the Legislature that in succeeding fiscal years, the Governor shall recommend and the Legislature shall appropriate \$1,500,000 from the General Fund to the Office on Minority and Multicultural Health to carry out its responsibilities under this act. This amount shall be in addition to any amounts allocated to the office in fiscal year 2001 pursuant to P.L.2000, c.53.

10. This act shall take effect immediately.

Approved August 8, 2001.

CHAPTER 206

AN ACT concerning limitations on a contractor's remedy for delayed performance caused by a contracting unit and amending P.L. 1971, c.198 and N.J.S.18A:18A-41.

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

1. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to read as follows:

C.40A:11-19 Liquidated damages; void provisions as to contractor's remedies.

19. Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons unanticipated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

2. N.J.S.18A:18A-41 is amended to read as follows:

Liquidated damages; void provisions as to contractor's remedies.

18A:18A-41. Liquidated damages. Any contract made pursuant to chapter 18A of Title 18A of the New Jersey Statutes may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of chapter 18A of Title 18A of the New Jersey Statutes. Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under Chapter 18A of Title 18A of the New Jersey Statutes to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons unanticipated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

3. This act shall take effect immediately.

Approved August 8, 2001.

CHAPTER 207

AN ACT concerning the transfer of hospital patients and supplementing Title 26 of the Revised Statutes.

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

C.26:2H-12.9b Short title.

1. This act shall be known and may be cited as "Leonard Cohen's Law."

C.26:2H-12.9c Discharge summary required for transfer of patients.

2. A general hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall not transfer a patient to another health care facility unless the patient is accompanied by a complete discharge summary from the transferring hospital at the time of the transfer.

C.26:2H-12.9d Noncompliance, penalties.

3. A hospital that fails to comply with the provisions of section 2 of this act shall be subject to such penalties as the Commissioner of Health and Senior Services shall determine pursuant to sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14).

4. This act shall take effect immediately.

Approved August 8, 2001.

CHAPTER 208

AN ACT concerning the liability of children and victims for payment of costs related to maintenance and support of institutionalized individuals and amending R.S.30:4-66 and P.L.1985, c.249.

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

1. R.S.30:4-66 is amended to read as follows:

Liability for patient's support.

30:4-66. Every patient supported in a State or county charitable institution or other residential functional service shall be personally liable for his maintenance and for all necessary expenses incurred by the institution or other residential functional service in his behalf and the husband, wife and father or mother of a child under 18 years of age, severally and respectively, being of sufficient ability, of every patient so confined, whose estate is not sufficient for his support, shall support, and maintain the patient in the institution or other residential functional service,

as the case may be, in such manner and to such an amount as the court shall direct pursuant to subsection a. of R.S.30:4-60 in the case of mentally ill patients, and in the case of developmentally disabled persons, as required pursuant to subsection b. of R.S.30:4-60. All spouses living separate and apart from their spouses so confined, and all parents of illegitimate children so confined shall also be personally liable for such expense.

But no payment shall be ordered to be made by a chargeable relative 55 years of age or over except with respect to the maintenance of his or her spouse or his or her natural or adopted child under the age of 18 years.

2. Section 3 of P.L.1985, c.249 (C.52:4B-36) is amended to read as follows:

C.52:4B-36 Findings, declarations relative to rights of crime victims, witnesses.

3. The Legislature finds and declares that crime victims and witnesses are entitled to the following rights:

- a. To be treated with dignity and compassion by the criminal justice system;
- b. To be informed about the criminal justice process;
- c. To be free from intimidation;
- d. To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible;
- e. To make at least one telephone call provided the call is reasonable in both length and location called;
- f. To medical assistance if, in the judgment of the law enforcement agency, medical assistance appears necessary;
- g. To be notified if presence in court is not needed;
- h. To be informed about available remedies, financial assistance and social services;
- i. To be compensated for their loss whenever possible;
- j. To be provided a secure, but not necessarily separate, waiting area during court proceedings;
- k. To be advised of case progress and final disposition;
- l. To the prompt return of property when no longer needed as evidence;
- m. To submit a written statement about the impact of the crime to a representative of the county prosecutor's office which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed;
- n. To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.

This statement is to be made in addition to the statement permitted for inclusion in the presentence report by N.J.S.2C:44-6.

In any homicide prosecution the victim's survivor may display directly to the sentencing court at the time of this statement a photograph of the victim taken before the homicide; and

o. No crime victim shall be required to pay the maintenance, support, rehabilitation or other costs arising from the imprisonment or commitment of a victimizer as a result of the crime.

3. This act shall take effect immediately and shall apply to any attempt made on or after the date of enactment of this act to recover from a patient's child the necessary expenses of the patient pursuant to R.S.30:4-66, or to recover from a crime victim the maintenance, support, rehabilitation or other costs arising from the imprisonment or commitment of the victimizer as a result of the crime

Approved August 15, 2001.

CHAPTER 209

AN ACT concerning paid health benefits coverage for retirees under the State Health Benefits Program 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 6 of P.L.1996, c.8 (C.52:14-17.28b) is amended to read as follows:

C.52:14-17.28b Determination of obligation of State, agencies to pay premium; periodic charges.

6. a. Notwithstanding the provisions of any other law to the contrary, the obligations of the State or an independent State authority, board, commission, corporation, agency, or organization to pay the premium or periodic charges for health benefits coverage provided under P.L.1961, c.49 (C.52:14-17.25 et seq.) may be determined by means of a binding collective negotiations agreement, including any agreements in force at the time of the adoption of P.L.1996, c.8. With respect to State employees for whom there is no majority representative for collective negotiations purposes, the commission may, in its sole discretion, modify the respective payment obligations set forth in P.L.1961, c.49 for the State and such employees in a manner consistent with the terms of any collective negotiations agreement binding on the State. With respect to employees of an independent State

authority, board, commission, corporation, agency, or organization for whom there is no majority representative for collective negotiations purposes, the employer may, in its sole discretion, modify the respective payment obligations set forth in P.L.1961, c.49 for such employer and such employees in a manner consistent with the terms of any collective negotiations agreement binding on such employer. The provisions of this subsection shall also apply to employees deemed or considered to be employees of the State pursuant to subsection (c) of section 2 of P.L.1961, c.49 (C.52:14-17.26).

b. (1) Notwithstanding the provisions of any other law to the contrary, for each State employee who accrues 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems before July 1, 1997, excepting the employee who elects deferred retirement, the State, upon the employee's retirement, shall pay the full cost of the premium or periodic charges for the health benefits provided to a retired State employee and dependents covered under the State Health Benefits Program, but not including survivors, and shall also reimburse the retired employee for premium charges under Part B of Medicare covering the retired employee and the employee's spouse.

(2) Notwithstanding the provisions of any other law to the contrary, for each State employee who accrues 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems on or after July 1, 1997, excepting the employee who elects deferred retirement, the State, upon the employee's retirement, shall pay the premium or periodic charges for the health benefits provided to a retired State employee and dependents covered under the State Health Benefits Program, but not including survivors, and shall reimburse the retired employee for premium charges under Part B of Medicare covering the retired employee and the employee's spouse: (a) in accordance with the provisions, if any, concerning health benefits coverage in retirement which are in the collective negotiations agreement applicable to the employee at the time of the employee's accrual of 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems, or (b) if the employee has no majority representative for collective negotiations purposes, in a manner consistent with the terms, if any, concerning health benefits coverage in retirement which are in any collective negotiations agreement deemed applicable by the State Health Benefits Commission to that employee at the time of the employee's accrual of 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems.

2. Section 8 of P.L.1961, c.49 (C.52:14-17.32) is amended to read as follows:

C.52:14-17.32 Health benefits for retirees.

8. a. The basic coverage and the major medical coverage of any employee, and the employee's dependents, if any, shall cease upon the discontinuance of the term of office or employment or upon cessation of active full-time employment subject to such regulations as may be prescribed by the commission for limited continuance of basic coverage and major medical coverage during disability, part-time employment, leave of absence or lay off, and for continuance of basic coverage and major medical coverage after retirement, any such continuance after retirement to be provided at such rates and under such conditions as shall be prescribed by the commission, subject, however, to the requirements hereinafter set forth in this section. The commission may also establish regulations prescribing an extension of coverage when an employee or dependent is totally disabled at termination of coverage.

b. Rates payable by retired employees for themselves and their dependents, by active employees for dependents covered by medicare benefits, and by the State or other employer for an active employee alone covered by medicare benefits, shall be determined on the basis of utilization experience according to classifications determined by the commission, provided, however, that the total rate payable by such retired employee for the employee and the employee's dependents, or by such active employee for the employee's dependents and the State or other employer for such active employee alone, for coverage hereunder and for Part B of medicare, shall not exceed by more than 25%, as determined by the commission, the total amount which would have been required to have been paid by the employee and by the State or other employer for the coverage maintained had the employee continued in office or active employment and the employee and the employee's dependents were not eligible for medicare benefits. "Medicare" as used in this act means the coverage provided under Title XVIII of the Social Security Act as amended in 1965, or its successor plan or plans.

c. (1) From funds appropriated therefor, the State shall pay the premium or periodic charges for the benefits provided to a retired State employee and the employee's dependents covered under the program, but not including survivors, if such employee retired from one or more State or locally-administered retirement systems on a benefit or benefits based in the aggregate on 25 years or more of nonconcurrent service credited in the retirement systems, excepting the employee who elected deferred retirement, but including the employee who retired on a disability pension based on fewer years of service credited in the retirement systems and shall also reimburse such retired employee for the premium charges under Part B of

the federal medicare program covering the retired employee and the employee's spouse. In the case of full-time employees of the Rutgers University Cooperative Extension Service, service credited in the federal Civil Service Retirement System (5 U.S.C.s.8331 et seq.) which was earned as a result of full-time employment at Rutgers University, may be considered alone or in combination with service credited in one or more State or locally-administered retirement systems for the purposes of establishing the minimum 25-year service requirement to qualify for the benefits provided in this section. Any full-time employee of the Rutgers University Cooperative Extension Service who meets the eligibility requirements set forth in this amendatory act shall be eligible for the benefits provided in this section, provided that at the time of retirement such employee was covered by the State Health Benefits Program and elected to continue such coverage into retirement.

(2) Notwithstanding the provisions of this section to the contrary, from funds appropriated therefor, the State shall pay the premium or periodic charges for the benefits provided to a retired State employee and the employee's dependents covered under the program, but not including survivors, if: (a) the employee retires on or after the effective date of this 1987 amendatory act; (b) the employee was employed by Rutgers University prior to January 2, 1955 and remained in continuous service with Rutgers University until retirement even though the employee (i) did not join a State-administered retirement system, or, (ii) became a member of a State-administered retirement system, but accumulated less than 25 years of credited service; and (c) the employee is covered by the program at the time of retirement.

(3) Notwithstanding the provisions of this section to the contrary, in the case of an employee of a State college, as described in chapter 64 of Title 18A of the New Jersey Statutes, or of a county college, as defined in N.J.S.18A:64A-1, service credited in a private defined contribution retirement plan which was earned as an employee of an auxiliary organization, as defined in section 2 of P.L.1982, c.16 (C.18A:64-27), at a State or county college shall be considered in combination with service credited in a State-administered retirement system for the purposes of establishing the minimum 25-year service requirement to qualify for the benefits provided in this section, provided that the employee is covered by the program at the time of retirement.

(4) Notwithstanding the provisions of this section to the contrary, from funds appropriated therefor, the State shall pay the premium or periodic charges for the benefits provided to a retired State employee and any dependents covered under the program, but not including survivors, if the employee: (a) retired prior to the effective date of this act, P.L.1997, c.335

(C.52:14-17.32), under the State Police Retirement System, established pursuant to P.L.1965, c.89 (C.53:5A-1 et seq.), with more than 20 but less than 25 years of service credit in the retirement system; (b) was subsequently employed by the State in another position or positions not covered by the State Police Retirement System; (c) has, in the aggregate, at least 30 years of full-time employment with the State; and (d) is covered by the program at the time of terminating full-time employment with the State.

3. Section 2 of P.L.1992, c.126 (C.52:14-17.32f1) is amended to read as follows:

C.52:14-17.32f1 Applicability of C.52:14-17.32f.

2. The provisions of section 3 of P.L.1987, c.384 (C.52:14-17.32f) shall apply to:

a. any employee of a board of education who retires on a benefit or benefits based in the aggregate upon 25 or more years of nonconcurrent service credit in one or more State or locally-administered retirement systems, or retires on a disability pension based upon fewer years of service credit in that system or systems, or elected deferred retirement based in the aggregate upon 25 or more years of nonconcurrent service credit in one or more State or locally-administered retirement systems and receives a retirement allowance from that system or systems;

b. any employee of a county college who retires on a benefit or benefits based in the aggregate upon 25 or more years of nonconcurrent service credit in one or more State or locally-administered retirement systems, or retires on a disability pension based upon fewer years of service credit in that system or systems, or elected deferred retirement based in the aggregate upon 25 or more years of nonconcurrent service credit in one or more State or locally-administered retirement systems and receives a retirement allowance from that system or systems; or who receives a disability benefit pursuant to section 18 of P.L.1969, c.242 (C.18A:66-184); and

c. any employee of a county college who retires on a benefit based upon 10 or more years of service credit in the alternate benefit program (P.L.1969, c.242; C.18A:66-167 et seq.) and who has additional years of service credited in another defined contribution retirement program as an employee of a private institution of higher education which, under contract with a county government, provided services as a county college and subsequently merged with a county technical institute to become a county college, which additional years of service when added to the service credited in the alternate benefit program totals 25 or more years and any such employee who retired prior to the effective date of P.L.1999, c.382 if the

employee applies to the program for coverage within one year after the effective date of P.L.1999, c.382.

The costs of the premium or periodic charges for the benefits and reimbursement of medicare premiums provided to a retiree and the dependents of the retiree under this section shall be paid by the State.

4. Section 7 of P.L.1964, c.125 (C.52:14-17.38) is amended to read as follows:

C.52:14-17.38 Certification of premium rates, charges; Medicare premiums; employer obligations.

7. a. The Division of Pensions and Benefits shall certify to the certifying agent of each employer electing participation under the program the premium rates and periodic charges applicable to the coverage provided for employees and dependents. The participating employer shall remit to the division all contributions to premiums and periodic charges in advance of their due dates, subject to the rules and regulations of the commission.

b. (1) From funds allocated therefor, the employer other than the State, upon the adoption and submission to the division of an appropriate resolution prescribed by the commission, may pay the premium or periodic charges for the benefits provided to a retired employee and the employee's dependents covered under the program, if the employee retired from a State or locally-administered retirement system, excepting the employee who elected deferred retirement, and may also reimburse the retired employee for the employee's premium charges under Part B of Medicare covering the retired employee and the employee's spouse if the employee:

(a) retired on a disability pension; or

(b) retired after 25 or more years of nonconcurrent service credit in one or more State or locally-administered retirement systems and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate; or

(c) retired and reached the age of 65 years or older with 25 years or more of nonconcurrent service credit in one or more State or locally-administered retirement systems and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate; or

(d) retired and reached the age of 62 years or older with at least 15 years of service with the employer.

"Retired employee and the employee's dependents" may, upon adoption of an appropriate resolution therefor by the participating employer, also include otherwise eligible employees, and their dependents, who retired

from one or more State or locally-administered retirement systems prior to the date that the employer became a participating employer in the New Jersey State Health Benefits Program or who did not elect to continue coverage in the program during such time after the employer became a participating employer that the employer did not pay premium or periodic charges for benefits to retired employees and their dependents pursuant to this section. Eligibility and enrollment of such employees and dependents shall be in accordance with such rules and regulations as may be adopted by the State Health Benefits Commission.

The employer other than the State may, by resolution, pay the premium or periodic charges for the benefits provided to the surviving spouse of a retired employee and the employee's dependents covered under the program as provided in this section.

(2) Notwithstanding the provisions of any other law to the contrary, the obligations of an employer other than the State, except an independent State authority, board, commission, corporation, agency, or organization deemed to be covered by section 6 of P.L.1996, c.8 (C.52:14-17.28b) and except school boards whose employees are covered by section 3 of P.L.1987, c.384 (C.52:14-17.32f), section 2 of P.L.1992, c.126 (C.52:14-17.32f1) and section 1 of P.L.1995, c.357 (C.52:14-17.32f2), to pay the premium or periodic charges for health benefits coverage under the provisions of paragraph (1) may be determined by means of a binding collective negotiations agreement, including any agreement in force at the time of the adoption of this act, P.L.1999, c.48. With respect to employees for whom there is no majority representative for collective negotiations purposes, the employer may, in its sole discretion, determine the payment obligations for the employer and the employees, except that if there are collective negotiations agreements binding upon the employer for employees who are within the same community of interest as employees in a collective negotiations unit but are excluded from participation in the unit by the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), the payment obligations shall be determined in a manner consistent with the terms of any collective negotiations agreement applicable to the collective negotiations unit.

c. Notwithstanding the provisions of any other law to the contrary, the payment obligations of an employee of an employer other than the State, except an independent State authority, board, commission, corporation, agency, or organization, for health benefits coverage under subsection b. shall be the payment obligations applicable to the employee on the date the employee retires on a disability pension or the date the employee meets the service credit and service requirements for the employer payment for the coverage, as the case may be.

5. This act shall take effect immediately.

Approved August 15, 2001.

CHAPTER 210

AN ACT concerning the licensure of insurance producers, amending P.L.1960, c.32, supplementing Title 17 of the Revised Statutes and repealing parts of the statutory law.

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

C.17:22A-26 Short title.

1. This act shall be known and may be cited as the "New Jersey Insurance Producer Licensing Act of 2001."

C.17:22A:27 Purpose of act.

2. This act governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes the statutory law to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance producer licenses.

C.17:22A-28 Definitions relative to licensure of insurance producers.

3. As used in this act:

"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his principal place of residence or principal place of business and is licensed to act as an insurance producer.

"Insurance" means any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes and includes contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, surety, guaranty and title insurance.

"Insurance consultant" means a person, who for a commission, brokerage fee, or other consideration, acts or holds himself out to the public or any licensee as offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any insurance policy or contract that is or could be issued in this State, but shall not

include bank trust officers, attorneys-at-law and certified public accountants who negotiate contracts on behalf of others or provide general financial counsel if no commission or brokerage fee is paid for those services.

"Insurance producer" means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.

"Insurer" means a business entity authorized to transact the business of insurance in this State pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes.

"License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurer.

"Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

"Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master corporate, group or individual contract or policy.

"Limited lines insurance" means those lines of insurance established pursuant to section 14 of this act or any other line of insurance that the commissioner determines is necessary to recognize for the purposes of complying with subsection e. of section 9 of this act.

"Limited lines insurance producer" means a person who is authorized by the commissioner to sell, solicit or negotiate limited lines insurance or to engage in the business of an insurance consultant.

"NAIC" means the National Association of Insurance Commissioners, its affiliates or subsidiaries, or any agency or committee thereof.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract or policy of insurance concerning any of the substantive benefits, terms or conditions of the contract or policy, provided that the person engaged in that act either: sells insurance or obtains insurance from insurers for purchasers.

"Person" means an individual or a business entity.

"Sell" means to exchange a contract or policy of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

"Surplus lines insurance producer" means a person who is authorized to sell, solicit or negotiate contracts or policies of insurance coverage on behalf of unauthorized insurers pursuant to "the surplus lines law," P.L.1960, c.32 (C.17:22-6.40 et seq.); and "surplus lines" shall have the same meaning as generally accorded to it by that act.

"Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

"Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

"Uniform application" means the current version of the NAIC uniform application for resident and nonresident insurance producer licensing.

C.17:22A-29 Licensure required.

4. A person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority in accordance with this act.

C.17:22A-30 Construction of act; license not required.

5. a. Nothing in this act shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

b. A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on contracts or policies written or sold to insure risks residing, located or to be performed in this State and:

(a) The officer's, director's or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(b) The officer's, director's or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract or policy of insurance; or

(c) The officer, director or employee is acting in the capacity of a special agency or agency supervisor assisting insurance producers and those activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities,

group or blanket accident and health insurance; or for the purpose of enrolling individuals under insurance plans, issuing certificates under insurance plans or otherwise assisting in administering insurance plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the insurer issuing the contracts or policies;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this State, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this State;

(6) A person who is not a resident of this State who sells, solicits or negotiates a contract or policy of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract or policy, so long as that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state in which the insured maintains its principal place of business and the contract or policy of insurance insures risks located in that state; or

(7) A salaried full-time employee who counsels or advises his employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer if the employee does not sell or solicit insurance or receive a commission.

C.17:22A-31 Written examination, fee.

6. a. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 10 of this act. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and

responsibilities of an insurance producer and the insurance laws and regulations of this State. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

b. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 19 of this act.

c. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner as set forth in section 19 of this act.

d. An individual who fails to appear for the examination as scheduled or fails to pass the examination, may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

C.17:22A-32 Application, approval.

7. a. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

- (1) Is at least 18 years of age;
- (2) Has not committed any act that is a ground for denial, suspension or revocation set forth in section 15 of this act;
- (3) Has completed a prelicensing course of study for the lines of authority for which the individual has applied as prescribed by the commissioner by regulation;
- (4) Has paid the fees set forth in section 19 of this act; and
- (5) Has successfully passed the examinations for the lines of authority for which the individual has applied.

b. A business entity acting as an insurance producer shall obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the fees set forth in section 19 of this act; and
- (2) The business entity has designated a licensed insurance producer or producers responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.

c. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

d. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that is approved by the commissioner.

C.17:22A-33 Issuance of resident insurance producer license.

8. a. Unless denied licensure pursuant to section 15 of this act, persons who have met the requirements of sections 6 and 7 of this act shall be issued a resident insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life-insurance coverage on human lives, including benefits of death and annuities, and which may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness-insurance coverage for sickness, bodily injury or accidental death, and which may include benefits for disability income;

(3) Property-insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty-insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property;

(5) Variable life and variable annuity products-insurance coverage provided under variable life insurance contracts, variable annuities or any other life insurance or annuity product that reflects the investment experience of a separate account;

(6) Credit-limited line credit insurance;

(7) Personal lines - property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(8) Any other line of insurance permitted under any law or regulation of this State.

b. An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in section 19 of this act is timely paid and in the case of resident individual insurance producers, education requirements are timely satisfied.

c. An individual insurance producer who allows his license to lapse may, within 12 months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in an amount not to exceed double the unpaid renewal fee shall be required for any renewal fee received after the due date.

d. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examina-

tion requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

e. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the commissioner deems necessary.

f. Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change.

C.17:22A-34 Nonresident insurance producer license.

9. a. Unless denied licensure pursuant to section 15 of this act, a nonresident person shall receive a nonresident insurance producer license if:

(1) The person is currently licensed as a resident insurance producer in good standing in his home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by section 19 of this act;

(3) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his home state, or in lieu of the same, a completed uniform application; and

(4) The person's home state awards nonresident insurance producer licenses to residents of this State on the same basis.

b. The commissioner may verify the nonresident insurance producer's licensing status through the Producer Database maintained by the NAIC.

c. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this State to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence. No fee or license application shall be required.

d. Subject to section 13 of this act, a person licensed as a surplus lines insurance producer in his home state shall receive a nonresident surplus lines insurance producer license pursuant to subsection a. of this section.

e. Subject to section 14 of this act, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in his home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection a. of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

f. Each licensed nonresident insurance producer shall, by application for and issuance of, a license be deemed to have appointed the commissioner as agent to receive service of original legal process in this State in any cause of action or legal proceedings arising within this State out of transactions under the license. Service upon the commissioner shall be of

the same force and effect as if served on the nonresident insurance producer. This appointment shall be irrevocable for as long as there can be any cause of action against the nonresident insurance producer arising out of insurance transactions for which a nonresident insurance producer license is required. Duplicate copies of the legal process shall be served upon the commissioner. At the time of service the commissioner shall be paid a fee established pursuant to section 19 of this act payable as costs in the action. Upon receiving service, the commissioner shall send one of the copies by registered or certified mail, return receipt requested, to the named nonresident insurance producer at his last known business or residence address.

g. The commissioner shall be immune from all civil actions resulting from the licensee's failure to receive service of process if the commissioner, pursuant to subsection f. of this section, forwards the service to the last business or residence address filed by the licensee as his address. Immunity under this subsection is in no way intended to diminish or otherwise affect the immunity available to the commissioner pursuant to the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

C.17:22A-35 Exemptions from prelicensing education, examination.

10. a. An individual who applies for an insurance producer license in this State who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 90 days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the NAIC, indicate that the producer is or was licensed in good standing for the lines of authority requested.

b. A person licensed as an insurance producer in another state who moves to this State shall make application within 90 days of establishing legal residence to become a resident licensee pursuant to section 7 of this act. No prelicensing education or examination shall be required of that person to obtain any lines of authority previously held in the prior state except in cases in which the commissioner determines otherwise by regulation.

C.17:22A-36 Notification of assumed name.

11. An insurance producer doing business under any name other than the producer's legal name shall notify the commissioner prior to using the assumed name.

C.17:22A-37 Temporary license.

12. a. The commissioner may issue a temporary insurance producer license for a period not to exceed 180 days without requiring an examination if the commissioner determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer, upon the death or disability of that producer, to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;

(2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license as responsible for the business entity's compliance with the insurance laws, rules and regulations of this State;

(3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or

(4) In any other circumstance in which the commissioner determines that the public interest will best be served by the issuance of a temporary insurance producer license.

b. The commissioner may, by order, limit the authority of any temporary licensee in any way necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license shall not continue after the owner or the personal representative disposes of the insurance producer's business.

C.17:22A-38 Requirements for license granting surplus lines authority.

13. a. No license granting surplus lines authority shall be issued or renewed unless the applicant holds or will hold property and casualty authorities.

b. No surplus lines producer shall charge any fee to an originating broker in connection with the negotiation or procurement of any contract of surplus lines insurance that shall exceed \$50 plus the actual costs incurred for any services performed by a person that is not associated with the surplus lines producer, such as inspection services.

C.17:22A-39 Insurance marketed through limited lines insurance producers.

14. The commissioner shall establish, by rule or regulation, the line or lines of insurance that may be marketed through a limited lines insurance producer.

C.17:22A-40 Causes for probation, suspension, revocation, refusal to renew.

15. a. The commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with subsection c. of section 20 of this act or any combination of actions, for any one or more of the following causes:

- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (2) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance regulator;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract, policy or application for insurance;
- (6) Having been convicted of a felony or crime of the fourth degree or higher;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere;
- (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Improperly using notes or any other reference material to complete an examination for an insurance producer license;
- (12) Knowingly accepting insurance business from an unlicensed insurance producer;
- (13) Failing to comply with an administrative or court order imposing a child support obligation;
- (14) Failing to pay income tax or comply with any administrative or court order directing payment of income tax pursuant to Title 54A of the New Jersey Statutes;
- (15) Intentionally withholding material information or making a material misstatement in an application for a license;

(16) Committing any fraudulent act;
(17) Knowingly facilitating or assisting another person in violating any insurance laws; or

(18) Failing to notify the commissioner within 30 days of his conviction of any crime, indictment or the filing of any formal criminal charges, or the suspension or revocation of any insurance license or authority by a state, other than this State, or the initiation of formal disciplinary proceedings in a state, other than this State, affecting the producer's insurance license; or failing to obtain the written consent pursuant to 18 U.S.C. sections 1033 and 1034; or failing to supply any documentation that the commissioner may request in connection therewith.

b. If the action by the commissioner is to nonrenew or to deny an application for an insurance producer license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the license. The applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner, or his designee, to determine the reasonableness of the commissioner's action. The hearing shall be held pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. The insurance producer license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.

d. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of this act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law.

C.17:22A-41 Licensure required for receipt of commission.

16. a. An insurer or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this State if that person is required to be licensed under this act and is not so licensed.

b. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this State if that person is required to be licensed under this act and is not so licensed.

c. Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this State if the person was required to be licensed under this act at the time of the sale, solicitation or negotiation and was so licensed at that time.

d. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this State, unless the payment would violate section 15 of P.L.1944, c.27 (C.17:29A-15), section 14 of P.L.1982, c.114 (C.17:29AA-14), section 4 of P.L.1947, c.379 (C.17:29B-4), section 5 of P.L.1968, c.248 (C.17:46A-5), section 34 or 35 of P.L.1975, c.106 (C.17:46B-34 or 17:46B-35) or N.J.S.17B:30-13 or any other provision of law.

C.17:22A-42 Appointment of agents.

17. a. Any insurer authorized to transact business in this State may, by written contract, appoint as its agent, a person that holds a valid insurance producer license issued in accordance with the provisions of this act. The contract shall authorize the insurance producer to act as an agent for the appointing insurer for all lines of insurance for which the insurer is authorized in this State and the agent holds authority in this State, unless specifically limited. The contract shall contain the duties, responsibilities and limitations of authority between the agent and the appointing insurer, and the agent shall abide by its terms. While the agent is properly licensed, an agency appointment shall continue in effect until termination in accordance with this act. Both the appointing insurer and the appointed agent shall maintain a copy of the agency contract in their office, and shall make the contract available for inspection by the commissioner upon request. Nothing contained in this subsection shall be construed as granting the commissioner the authority to determine contractual disputes between an appointing insurer and an appointed agent.

b. Upon the cancellation of an agency contract in accordance with section 1 of P.L.1970, c.217 (C.17:22-6.14a), the insurer shall within 15 days file written notice of cancellation with the commissioner. Notice of cancellation shall be on a form prescribed by the commissioner and shall indicate the date of cancellation and the reason therefor. Agency appointment shall not terminate until the notice of cancellation has been filed with the commissioner. The requirements of this subsection shall not affect any notice or filing requirements otherwise established by law.

c. Any insurer appointing an agent pursuant to this section shall file with the commissioner, on a form prescribed by the commissioner, a notice of appointment providing the names and business addresses of its agents, including notice of any limitations on the agent's authority. The filing of a

single notice of appointment by each insurer represented by a licensed business entity shall cover all of its licensed producers.

d. The filing of a notice of appointment pursuant to subsection c. of this section shall constitute notice that the named insurance producer has been appointed an agent for any subsidiary or affiliate company of the insurer if certified copies of any resolution duly adopted by the board of directors of each insurer requesting that authority are filed with the commissioner. The resolution shall also designate the primary insurer for which all of the insurer's agents shall be appointed.

C.17:22A-43 Immunity from civil liability.

18. a. (1) In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to section 17 of this act or this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection b. of section 17 of this act was reported to the commissioner, provided that the propriety of any termination for cause is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.

(2) In any action brought against a person that has immunity under paragraph (1) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.

(3) Paragraph (1) or (2) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

b. (1) Any documents, materials or other information in the control or possession of the department furnished by an insurer, insurance producer or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the commissioner in an investigation pursuant to this section, shall be confidential by law and privileged, shall not be subject to any State or federal freedom of information law, shall not be subject to

subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(2) Neither the commissioner, nor any person who received documents, materials or other information while acting under the authority of the commissioner, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (1) of this subsection.

(3) In order to assist in the performance of the commissioner's duties under this act, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (1) of this subsection, with other state, federal, and international regulatory agencies, with the NAIC, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information pursuant to this section;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(c) May enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (3) of this subsection.

(5) Nothing in this act shall prohibit the commissioner from releasing final, adjudicated actions including terminations for cause that are open to public inspection pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) to a database or other clearinghouse service maintained by the NAIC.

c. An insurer, the authorized representative of the insurer, or an insurance producer that fails to report as required under the provisions of this section or that is found by a court of competent jurisdiction to have reported with actual malice may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with section 20 of this act.

C.17:22A-44 Fees.

19. a. The commissioner shall, by regulation, set reasonable, necessary and appropriate fees to be charged for licensing insurance producers, filing agency appointments, filing limited insurance producer registrations, filing fictitious, trade or firm names, issuing certification of license status and processing any document required to be submitted pursuant to this act, except that the total annual revenue generated from these fees shall not be less than the total annual revenue generated from equivalent fees for the preceding fiscal year.

b. Applicants may be charged a fee for any licensing examination conducted pursuant to this act in an amount designated or approved by the commissioner.

c. All fees payable to the commissioner pursuant to this section are nonrefundable.

d. The commissioner may, by rule or regulation, provide for the waiving of fees for disabled war veterans of the United States military service.

C.17:22A-45 Powers of commissioner.

20. a. The commissioner shall have the power to conduct investigations, to administer oaths, to interrogate licensees and others, and to issue subpoenas to any licensee or any other person in connection with any investigation, hearing or other proceeding pursuant to this act, without fee.

b. Subpoenas shall be issued in the name of the commissioner, the deputy commissioner or other employee designated by the commissioner, but no subpoena shall be issued except for good cause. Any person failing or refusing to comply with a subpoena may be ordered by a judge of the Superior Court, on application made by the commissioner or by the person at whose instance the subpoena was issued, to comply with the terms of the subpoena or be punished by the court for contempt. The court may proceed in a summary manner.

c. Any person violating any provision of this act shall be liable to a penalty not exceeding \$5,000 for the first offense and not exceeding \$10,000 for each subsequent offense to be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition, the commissioner or the court, as the case may be, may order restitution of moneys owed any person and reimbursement of the costs of investigation and prosecution, as appropriate.

d. In any formal proceeding, if the commissioner finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of

a final order, he may enter an appropriate order to be effective pending completion of the hearing and entry of a final order. These orders may be entered on ex parte proofs if the proofs indicate that the commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered. In the alternative, or in addition, the commissioner is authorized to institute a proceeding in the Superior Court, to be conducted in a summary manner, for an injunction against specified acts or conduct in aid of the proceedings pending before him, including temporary injunctions and interim restraints.

C.17:22A-46 Fees, requirements for nonresident insurance producers, reciprocity.

21. a. The commissioner shall not assess a greater fee for an insurance producer license or related service to a person not residing in this State based solely on the fact that the person does not reside in this State.

b. The commissioner shall waive any license application requirements for a nonresident insurance producer license applicant with a valid license from his home state, except the requirements imposed by section 9 of this act, if the applicant's home state awards nonresident insurance producer licenses to licensees of this State on the same basis.

c. A nonresident insurance producer's satisfaction of his home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this State's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this State on the same basis.

C.17:22A-47 Reports to commissioner.

22. a. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

b. Within 30 days of the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

23. Section 8 of P.L.1960, c.32 (C.17:22-6.42) is amended to read as follows:

C.17:22-6.42 Procurement of surplus line coverages; conditions.

8. If certain insurance coverages of subjects resident, located, or to be performed in this State cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(a) The insurance must be eligible for export under section 9 of P.L.1960, c.32 (C.17:22-6.43);

(b) The insurer must be an eligible surplus lines insurer under section 11 of P.L.1960, c.32 (C.17:22-6.45);

(c) The insurance must be so placed through a licensed New Jersey surplus lines agent; and

(d) Other applicable provisions of this surplus lines law must be complied with.

(e) No surplus lines agent shall exercise binding authority in this State on behalf of any insurer unless the agent has first filed with the commissioner for informational purposes and not for the purpose of approval or disapproval the written agreement between the agent and the insurer setting forth the terms, conditions and limitations governing the exercise of the binding authority by the agent. A copy of any amendments to the agreement and of any notice of cancellation or termination of the agreement shall be filed by the agent with the commissioner no later than 10 days after adoption thereof.

The agreement filed pursuant to this section shall be considered and treated as a confidential document, and shall not be available for inspection by the public.

The agreement shall include the following items:

(1) A description of the classes of insurance for which the agent holds binding authority;

(2) The geographical limits upon the exercise of binding authority by the agent;

(3) The maximum dollar limitation on the binding authority of the agent for any one risk for each class of insurance written by the agent;

(4) The maximum policy period for which the agent may bind a risk;

(5) If the binding authority is delegable by the agent, a prohibition against the delegation without the prior written approval of the insurer.

If an agent who is qualified in accordance with this section to exercise binding authority on behalf of an insurer delegates the binding authority to any other agent, the agent to whom the authority is delegated shall not exercise the same until a copy of the instrument delegating the binding authority shall first have been filed with the commissioner for informational purposes and not for the purpose of approval or disapproval. The instru-

ment delegating the binding authority shall include an identification of the binding authority agreement between the delegating agent and the insurer.

24. Section 23 of P.L.1960, c.32 (C.17:22-6.57) is amended to read as follows:

C.17:22-6.57 Record of surplus lines contracts procured.

23. Each surplus lines agent shall keep in his office a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

- (a) Amount of the insurance and perils insured against;
- (b) Brief general description of property insured and where located;
- (c) Gross premium charged;
- (d) Return premium paid, if any;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract, and the terms thereof;
- (g) Name and post-office address of the insured;
- (h) Name and home office address of the insurer;
- (i) Amount collected from the insured; and
- (j) Other information as may be required by the commissioner.

The record shall at all times be open to examination by the commissioner without notice, and shall be so kept available and open to the commissioner for five years next following expiration or cancellation of the contract.

25. Section 27 of P.L.1960, c.32 (C.17:22-6.61) is amended to read as follows:

C.17:22-6.61 Suspension, revocation, refusal to renew license of surplus lines agents.

27. The commissioner may suspend, revoke, or refuse to renew the license of a surplus lines agent and all other licenses and permits held by the licensee under this Title, upon any one or more of the following grounds:

- (a) (Deleted by amendment, P.L.2001, c.210);
- (b) Removal of the accounts and records of his surplus lines business during the period when such accounts and records are required to be maintained under section 23 of P.L.1960, c.32 (C.17:22-6.57);
- (c) Closure of the licensee's office for a period of more than 30 consecutive days, unless granted permission by the commissioner upon showing circumstances warranting such closure for a longer period;
- (d) Failure to make and file his quarterly reports when due as required by section 24 of P.L.1960, c.32 (C.17:22-6.58);

- (e) Failure to pay the tax on surplus lines premiums, as provided for in this surplus lines law;
- (f) (Deleted by amendment, P.L.2001, c.210);
- (g) Suspension, revocation or refusal to renew any other license issued by the commissioner;
- (h) Lack of qualifications as for an original surplus lines agent's license;
- (i) Violation of any provision of this surplus lines law;
- (j) For any other cause for which a license could be denied, revoked, suspended or renewal refused under section 15 of P.L.2001, c.210 (C.17:22A-40).

In addition to the foregoing penalties set forth in this section, any person, persons or corporation violating any of the provisions of this act shall be liable to a penalty not exceeding \$2,500 for the first offense and not exceeding \$5,000 for each succeeding offense to be recovered in a summary proceeding as provided in R.S.17:33-2.

C.17:22A-48 Rules, regulations.

26. a. The commissioner may, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) promulgate rules and regulations necessary to effectuate the purposes of this act.

b. The commissioner may provide for the orderly transition of producer license types and authorities by promulgating rules and regulations that are reasonable, necessary, appropriate and consistent with this act.

Repealer.

27. P.L.1987, c.293 (C.17:22A-1 et seq.); section 13 of P.L.1996, c.69 (C.17:22A-14.1); and P.L.1997, c.429 (C.17:22A-16.1) are repealed.

28. This act shall take effect immediately, but sections 1 through 25 and 27 shall remain inoperative until the adoption of regulations effectuating their purposes pursuant to section 26 of this act, provided however, that no provision of this act shall remain inoperative on or after November 12, 2002

Approved August 15, 2001.

CHAPTER 211

AN ACT concerning petitions used in certain elections, amending R.S.19:23-14, R.S.19:24-4 and 19:25-3, and supplementing chapter 5 of Title 1 of the Revised Statutes.

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

1. R.S.19:23-14 is amended to read as follows:

Certification by municipal clerk.

19:23-14. Petitions addressed to the Attorney General, the county clerks, or the municipal clerks shall be filed with such officers, respectively, before 4:00 p.m. of the 57th day next preceding the day of the holding of the primary election for the general election.

Not later than the close of business of the 48th day preceding the primary election for the general election, the municipal clerk shall certify to the county clerk the full and correct names and addresses of all candidates for nomination for public and party office and the name of the political party of which such persons are candidates together with their slogan and designation. The county clerk shall transmit this information to the Election Law Enforcement Commission in the form and manner prescribed by the commission and shall notify the commission immediately upon the withdrawal of a petition of nomination.

2. R.S.19:24-4 is amended to read as follows:

National convention delegates.

19:24-4. Not less than 100 members of each such political party may file with the Attorney General at least 57 days prior to the primary election for the general election in any year of a national convention a petition requesting that the name of a person therein indorsed shall be printed on the primary ticket of such political party as candidate for the position of delegate-at-large or alternate-at-large, to be chosen by the party voters throughout the State to the national convention of that party, or as a delegate or alternate to be chosen to that convention by the voters of any congressional district.

The signers to the petition for any delegate-at-large or alternate-at-large shall be legal voters resident in the State; and the signers for any delegate or alternate from any Congressional district shall be voters of such district.

The Attorney General shall not later than the 48th day preceding the primary election for the general election certify to each county clerk and county board such nominations for delegates and alternates-at-large and the nominations for delegate or alternate for any Congressional district.

3. R.S.19:25-3 is amended to read as follows:

Presidential candidates.

19:25-3. Not less than one thousand voters of any political party may file a petition with the Attorney General on or before the 57th day before a primary election in any year in which a President of the United States is to be chosen, requesting that the name of the person indorsed therein as a candidate of such party for the office of President of the United States shall be printed upon the official primary ballot of that party for the then ensuing election for delegates and alternates to the national convention of such party.

The petition shall be prepared and filed in the form and manner herein required for the indorsement of candidates to be voted for at the primary election for the general election, except that the candidate shall not be permitted to have a designation or slogan following his name, and that it shall not be necessary to have the consent of such candidate for President indorsed on the petition.

C.1:5-3 Format of petition for referendum.

4. a. Whenever a petition is circulated within a county, municipality, school district, or special district for the purpose of gathering the signatures of registered voters in order to place a referendum question on the ballot in any election, each page of the petition shall be arranged to contain, in addition to such other content relative thereto required by law, 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.

b. Upon the enactment of this act, the Attorney General shall notify in writing each county and municipal clerk and the secretary of the board of education of each school district in the State of the provisions of subsection a. of this section and thereafter shall repeat such notification as periodically as the Attorney General deems necessary.

5. This act shall take effect immediately, but subsection a. of section 4 shall be inoperative until January 1 following enactment.

Approved August 15, 2001.

CHAPTER 212

AN ACT concerning principal and income guidelines for trusts and estates and repealing N.J.S.3B:19A-1 et seq.

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

C.3B:19B-1 Short title.

1. Short Title. This act shall be known and may be cited as the "Uniform Principal and Income Act of 2001."

C.3B:19B-2 Definitions.

2. Definitions. As used in this act:

"Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

"Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in sections 10 through 23 of this act.

"Income beneficiary" means a person to whom net income of a trust is or may be payable.

"Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

"Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

"Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

"Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

“Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

“Trustee” includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

C.3B:19B-3 Fiduciary duties; general principles.

3. Fiduciary Duties; General Principles. a. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 5 through 9 of this act, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this act;

(3) shall administer a trust or estate in accordance with this act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

b. A fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries.

C.3B:19B-4 Trustee's power to adjust.

4. Trustee's Power to Adjust. a. A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in subsection a. of section 3 of this act, that the trustee is unable to comply with subsection b. of section 3 of this act. A decision by a trustee to increase the distribution to the income beneficiary or beneficiaries in any accounting period to an amount not in excess of four percent, or to decrease that period's distributions to not less than six percent, of the net fair market value of the trust assets on the first business day of that accounting period shall be presumed to be fair and reasonable to all of the beneficiaries. Any adjustment by a trustee between income and principal with respect to any accounting period shall be made during that accounting period or within 65 days after the end of that period.

b. In deciding whether and to what extent to exercise the power conferred by subsection a. of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1) the nature, purpose and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;
- (9) the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from elections and decisions regarding tax matters, the imposition of an income or other tax on the fiduciary or a beneficiary as a result of a transaction involving a distribution from the estate or trust, or the ownership of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary; and
- (10) the anticipated tax consequences of an adjustment.

c. A trustee shall not make an adjustment:

- (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

d. If paragraph (5), (6), (7) or (8) of subsection c. of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

e. A trustee may release the entire power conferred by subsection a. of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) through (6) or (8) of subsection c. of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection c. of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

f. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection a. of this section.

C.3B:19B-5 Determination and distribution of net income.

5. Determination and Distribution of Net Income. After a decedent dies, in the case of an estate or after an income interest in a trust ends, the following rules apply:

a. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically devised to a beneficiary under the rules in sections 7 through 28 of this act which apply to trustees and the rules in subsection e. of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

b. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in sections 7 through 28 of this act which apply to trustees and by:

(1) including in net income all income from property used to discharge liabilities; and

(2) paying from principal all disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, expenses of administration, including fees of attorneys, accountants and fiduciaries, court costs, debts, funeral expenses, disposition of remains, family allowances and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

c. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subsection b. of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

d. A fiduciary shall distribute the net income remaining after distributions required by subsection c. of this section in the manner described in section 6 of this act to all other beneficiaries, excluding a beneficiary who receives a pecuniary amount outright or in trust.

e. A fiduciary shall not reduce principal or income receipts from property described in subsection a. of this section because of a payment described in section 24 or 25 of this act to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by

making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

C.3B:19B-6 Distribution to residuary and remainder beneficiaries.

6. Distribution to Residuary and Remainder Beneficiaries. a. Each beneficiary described in subsection d. of section 5 of this act is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

b. In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

c. If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

d. A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

C.3B:19B-7 When right to income begins and ends.

7. When Right to Income Begins and Ends. a. An income beneficiary is entitled to net income from the date on which the income interest begins.

An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

b. An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

c. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection d. of this section, even if there is an intervening period of administration to wind up the preceding income interest.

d. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

C.3B:19B-8 Apportionment of receipts and disbursements when decedent dies or income interest begins.

8. Apportionment of Receipts and Disbursements When Decedent Dies or Income Interest Begins. a. A trustee shall allocate an income receipt or disbursement, other than one to which subsection a. of section 5 of this act applies, to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

b. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

c. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this act. Distributions to shareholders or other owners from an entity to which section 10 of this act applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the

distribution. A due date is periodic for receipts or disbursements that are to be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

C.3B:19B-9 Apportionment when income interest ends.

9. Apportionment When Income Interest Ends. a. As used in this section, “undistributed income” means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

b. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary’s share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

c. When a trustee’s obligation to pay a fixed annuity or a fixed fraction of the value of the trust’s assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

C.3B:19B-10 Character of receipts.

10. Character of Receipts. a. As used in this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 11 of this act applies, a business or activity to which section 12 of this act applies or an asset-backed security to which section 23 of this act applies.

b. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

c. A trustee shall allocate the following receipts from an entity to principal:

- (1) property other than money;
- (2) money received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity;
- (3) money received in total or partial liquidation of the entity; and
- (4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

d. Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

e. Money is not received in partial liquidation, nor may it be taken into account under paragraph (2) of subsection d. of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

f. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

C.3B:19B-11 Distribution from trust or estate.

11. Distribution from Trust or Estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 10 or 23 of this act applies to a receipt from the trust.

C.3B:19B-12 Business and other activities conducted by trustee.

12. Business and Other Activities Conducted by Trustee. a. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

b. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts are to be retained for working capital, the acquisition or replacement of fixed assets and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee

determines that the amount received is no longer required in the conduct of the business.

c. Activities for which a trustee may maintain separate accounting records include:

- (1) retail, manufacturing, service and other traditional business activities;
- (2) farming;
- (3) raising and selling livestock and other animals;
- (4) management of rental properties;
- (5) extraction of minerals and other natural resources;
- (6) timber operations; and
- (7) activities to which section 22 of this act applies.

C.3B:19B-13 Principal receipts.

13. Principal Receipts. A trustee shall allocate to principal:

a. To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payer under a contract naming the trust or its trustee as beneficiary;

b. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to sections 10 through 23 of this act;

c. Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (9) of subsection a. of section 25 of this act or for other reasons to the extent not based on the loss of income;

d. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

e. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and

f. Other receipts as provided in sections 17 through 23 of this act.

C.3B:19B-14 Rental property.

14. Rental Property. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

C.3B:19B-15 Obligation to pay money.

15. Obligation to Pay Money. a. An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

b. A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

c. This section does not apply to an obligation to which section 17, 18, 19, 20, 22 or 23 of this act applies.

C.3B:19B-16 Insurance policies and similar contracts.

16. Insurance Policies and Similar Contracts. a. Except as otherwise provided in subsection b. of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

b. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 12 of this act, loss of profits from a business.

c. This section does not apply to a contract to which section 17 of this act applies.

C.3B:19B-17 Deferred compensation, retirement benefits, annuities, and similar payments.

17. Deferred Compensation, Retirement Benefits, Annuities, and Similar Payments. a. As used in this section, "payment" means a payment that a trustee may receive over a fixed period of time or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer or by another, including a private or

commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

b. To the extent that a trustee can readily ascertain the part of a payment from a separate fund held for the benefit of the trust that represents the then undistributed net income of the fund realized since the trust acquired its interest in the fund, a trustee shall allocate that part to income. The trustee shall allocate to principal the balance of the payment.

c. If no part of a payment is allocated to income under subsection b. of this section, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

d. If, to obtain an estate tax or gift tax marital deduction for a trust, the trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

e. This section does not apply to payments to which section 18 of this act applies.

C.3B:19B-18 Liquidating asset.

18. Liquidating Asset. a. As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 17 of this act, resources subject to section 19 of this act, timber subject to section 20 of this act, an activity subject to section 22 of this act, an asset subject to section 23 of this act, or any asset for which the trustee establishes a reserve for depreciation under section 26 of this act.

b. A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

C.3B:19B-19 Minerals, water and other natural resources.

19. Minerals, Water and Other Natural Resources. a. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) if received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income;

(2) if received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal;

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income;

(4) if an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3) of this subsection a., 90 percent of the net amount received shall be allocated to principal and the balance to income.

b. An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90 percent of the amount shall be allocated to principal and the balance to income.

c. This act applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

d. If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

C.3B:19B-20 Timber.

20. Timber. a. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2) of this subsection a.; or

(4) to principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (1), (2) or (3) of this subsection a.

b. In determining net receipts to be allocated pursuant to subsection a. of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

c. This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

d. If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

C.3B:19B-21 Property not productive of income.

21. Property Not Productive of Income. a. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 4 of this act and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by subsection a. of section 4 of this act. The trustee may decide which action or combination of actions to take.

b. In cases not governed by subsection a. of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

C.3B:19B-22 Derivatives and options.

22. Derivatives and Options. a. As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

b. To the extent that a trustee does not account under section 12 of this act for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

c. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

C.3B:19B-23 Asset-backed securities.

23. Asset-backed Securities. a. As used in this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 10 or 17 of this act applies.

b. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

c. If a trust receives one or more payments in exchange for the trust’s entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust’s interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

C.3B:19B-24 Disbursements from income.

24. Disbursements from Income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (1) or (2) of subsection b. of section 5 of this act applies:

a. commissions allowed by law to a trustee on income receipts, if properly chargeable to the trust;

b. one-half of the fees paid to banks and other financial institutions for custodial services to the fiduciary if properly chargeable to the trust;

c. all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest paid by the trustee, including

interest on death taxes, regularly recurring taxes assessed against any portion of the principal, water rates, bond premiums, and the expenses, including court costs, attorneys' fees, and accountants' fees, of an accounting, judicial proceeding or other matter that concerns primarily the income interest, unless the court directs otherwise; and

d. recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

C.3B:19B-25 Disbursements from principal.

25. Disbursements from Principal. a. A trustee shall make the following disbursements from principal:

(1) commissions allowed by law to a trustee on principal receipts or distributions or on termination of the trust estate;

(2) the remaining one-half of the fees paid to banks and other financial institutions for custodial services, if properly chargeable to the trust;

(3) fees paid to banks and other financial institutions and registered investment advisors for investment advisory or investment management services, if properly chargeable to the trust;

(4) costs of investing and reinvesting principal and payments on the principal of an indebtedness, including a mortgage or security interest amortized by periodic payments of principal;

(5) extraordinary repairs or expenses incurred in making a capital improvement, including special assessments, and disbursements made to prepare property for sale;

(6) court costs, attorneys' fees, accountants' fees and other fees, incurred on an accounting or judicial proceeding or in maintaining or defending any action to construe a will or a trust, protect it or the trust estate, or assure the title of any property, unless properly chargeable to income under subsection c. of section 24 of this act or the court otherwise directs;

(7) premiums paid on an insurance policy not described in subsection d. of section 24 of this act of which the trust is the owner and beneficiary;

(8) estate, inheritance and other transfer taxes, including penalties apportioned to the trust;

(9) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the cost of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties and defending claims based on environmental matters; and

(10) if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and remainderman have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

b. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

C.3B:19B-26 Transfers from income to principal for depreciation.

26. Transfers from Income to Principal for Depreciation.

a. As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

b. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under section 12 of this act for the business or activity in which the asset is used.

c. An amount transferred to principal need not be held as a separate fund.

C.3B:19B-27 Transfer from income to reimburse principal.

27. Transfer from Income to Reimburse Principal. a. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

b. Principal disbursements to which subsection a. of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions; and

(3) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

c. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection a. of this section.

C.3B:19B-28 Income taxes.

28. Income Taxes. a. A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

b. A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

c. A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(a) receipts from the entity are allocated to principal; and

(b) the trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (a) of this paragraph (2).

d. For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

C.3B:19B-29 Uniformity of application and construction.

29. Uniformity of Application and Construction. In applying and construing this act, consideration shall be given to the fact that this is a uniform act, and there is a need to promote uniformity of the act with respect to its subject matter among states that enact it.

C.3B:19B-30 Application of act to existing and future trusts and estates.

30. Application of Act to Existing and Future Trusts and Estates. This act applies to every trust or decedent's estate existing on or after the effective date of this act, except as otherwise expressly provided in the will or terms of the trust or in this act.

C.3B:19B-31 Judicial control of discretionary powers.

31. Judicial Control of Discretionary Powers. a. A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

b. The decisions to which subsection a. of this section applies include:

(1) A determination under subsection a. of section 4 of this act of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors in deciding whether and to what extent to exercise the powers conferred by subsection a. of section 4 of this act.

c. If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the position they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his appropriate position.

(2) To the extent that an abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate position by requiring the fiduciary to withhold an amount from one or more of future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying paragraphs (1) and (2) of this subsection to restore the beneficiaries, the trust, or both, to the position they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

d. Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

Repealer.

32. Repealer. N.J.S.3B:19A-1 et seq. is repealed.

33. Effective Date. This act shall take effect on January 1 of the year following enactment

Approved August 15, 2001.

CHAPTER 213

AN ACT concerning penalties for driving while driver's license is suspended, amending R.S.39:3-40 and supplementing Title 2C of the New Jersey Statutes.

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

1. R.S.39:3-40 is amended to read as follows:

Penalties for driving while license suspended, etc.

39:3-40. No person to whom a driver's license has been refused or whose driver's license or reciprocity privilege has been suspended or revoked, or who has been prohibited from obtaining a driver's license, shall personally operate a motor vehicle during the period of refusal, suspension, revocation, or prohibition.

No person whose motor vehicle registration has been revoked shall operate or permit the operation of such motor vehicle during the period of such revocation.

Except as provided in subsection i. of this section, a person violating this section shall be subject to the following penalties:

a. Upon conviction for a first offense, a fine of \$500.00 and, if that offense involves the operation of a motor vehicle during a period when the violator's driver's license is suspended for a violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), revocation of the violator's motor vehicle registration privilege in accordance with the provisions of sections 2 through 6 of P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5);

b. Upon conviction for a second offense, a fine of \$750.00, imprisonment in the county jail for not more than five days and, if the second offense involves the operation of a motor vehicle during a period when the violator's driver's license is suspended and that second offense occurs within five years of a conviction for that same offense, revocation of the violator's

motor vehicle registration privilege in accordance with the provisions of sections 2 through 6 of P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5);

c. Upon conviction for a third offense or subsequent offense, a fine of \$1,000.00, imprisonment in the county jail for 10 days and, if the third offense involves the operation of a motor vehicle during a period when the violator's driver's license is suspended and that third offense occurs within five years of a conviction for the same offense, revocation of the violator's motor vehicle registration privilege in accordance with the provisions of sections 2 through 6 of P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5);

d. Upon conviction, the court shall impose or extend a period of suspension not to exceed six months;

e. Upon conviction, the court shall impose a period of imprisonment for not less than 45 days or more than 180 days, if while operating a vehicle in violation of this section a person is involved in an accident resulting in bodily injury to another person;

f. (1) Notwithstanding subsections a. through e., any person violating this section while under suspension issued pursuant to section 2 of P.L.1972, c.197 (C.39:6B-2), upon conviction, shall be fined \$500.00, shall have his license to operate a motor vehicle suspended for an additional period of not less than one year nor more than two years, and may be imprisoned in the county jail for not more than 90 days.

(2) Notwithstanding the provisions of subsections a. through e. of this section and paragraph (1) of this subsection, any person violating this section under suspension issued pursuant to R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a) or P.L.1982, c.85 (C.39:5-30a et seq.), shall be fined \$500, shall have his license to operate a motor vehicle suspended for an additional period of not less than one year or more than two years, and shall be imprisoned in the county jail for not less than 10 days or more than 90 days.

(3) Notwithstanding the provisions of subsections a. through e. of this section and paragraphs (1) and (2) of this subsection, a person shall have his license to operate a motor vehicle suspended for an additional period of not less than one year or more than two years, which period shall commence upon the completion of any prison sentence imposed upon that person, shall be fined \$500 and shall be imprisoned for a period of 60 to 90 days for a first offense, imprisoned for a period of 120 to 150 days for a second offense, and imprisoned for 180 days for a third or subsequent offense, for operating a motor vehicle while in violation of paragraph (2) of this subsection while:

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

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

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

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

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

g. In addition to the other applicable penalties provided under this section, a person violating this section whose license has been suspended pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35) or the regulations adopted thereunder, shall be fined \$3,000. The court shall waive the fine upon proof that the person has paid the total surcharge imposed pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35) or the regulations adopted thereunder. Notwithstanding the provisions of R.S.39:5-41, the fine imposed pursuant to this subsection shall be collected by the Division of Motor Vehicles pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35), and distributed as provided in that section, and the court shall file a copy of the judgment of conviction with the director and with the Clerk of the Superior Court who shall enter the following information upon the record of docketed judgments: the name of the person as judgment debtor; the Division of Motor Vehicles as judgment creditor; the amount of the fine; and the date of the order. These entries shall have the same force and effect as any civil judgment docketed in the Superior Court;

h. A person who owns or leases a motor vehicle and permits another to operate the motor vehicle commits a violation and is subject to suspension of his license to operate a motor vehicle and to revocation of registration pursuant to sections 2 through 6 of P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) if the person:

(1) Knows that the operator's license to operate a motor vehicle has been suspended for a violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a); or

(2) Knows that the operator's license to operate a motor vehicle is suspended and that the operator has been convicted, within the past five years, of operating a vehicle while the person's license was suspended or revoked;

i. If the violator's driver's license to operate a motor vehicle has been suspended pursuant to section 9 of P.L.1985, c.14 (C.39:4-139.10), the violator shall be subject to a maximum fine of \$100 upon proof that the violator has satisfied the parking ticket or tickets that were the subject of the Order of Suspension.

C.2C:40-22 Penalty for causing death or injury while driving in violation of R.S.39:3-40.

2. a. A person who, while operating a motor vehicle in violation of R.S.39:3-40, is involved in an accident resulting in the death of another person, shall be guilty of a crime of the third degree, in addition to any other penalties applicable under R.S.39:3-40. The person's driver's license shall be suspended for an additional period of one year, in addition to any suspension applicable under R.S.39:3-40. The additional period of suspension shall commence upon the completion of any term of imprisonment.

b. A person who, while operating a motor vehicle in violation of R.S.39:3-40, is involved in an accident resulting in serious bodily injury, as defined in N.J.S.2C:11-1, to another person shall be guilty of a crime of the fourth degree, in addition to any other penalties applicable under R.S.39:3-40. The person's driver's license shall be suspended for an additional period of one year, in addition to any suspension applicable under R.S.39:3-40. The additional period of suspension shall commence upon the completion of any term of imprisonment.

c. The provisions of N.J.S.2C:2-3 governing the causal relationship between conduct and result shall not apply in a prosecution under this section. For purposes of this offense, the defendant's act of operating a motor vehicle while his driver's license or reciprocity privilege has been suspended or revoked or who operates a motor vehicle without being licensed to do so is the cause of death or injury when:

(1) The operation of the motor vehicle is an antecedent but for which the death or injury would not have occurred; and

(2) The death or injury was not:

(a) too remote in its occurrence as to have a just bearing on the defendant's liability; or

(b) too dependent upon the conduct of another person which was unrelated to the defendant's operation of a motor vehicle as to have a just bearing on the defendant's liability.

d. It shall not be a defense to a prosecution under this section that the decedent contributed to his own death or injury by reckless or negligent conduct or operation of a motor vehicle.

e. Nothing in this section shall be construed to preclude or limit any prosecution for homicide.

3. This act shall take effect immediately.

Approved August 20, 2001.

CHAPTER 214

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, 2001 and regulating the disbursement thereof," approved June 30, 2000, P.L.2000, c.53).

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.2000, c.53, there is appropriated out of the General Fund the following sum for the purpose specified:

67 DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS
80 Special Government Services
83 Services to Veterans
DIRECT STATE SERVICES

50-3610 Veterans' Outreach and Assistance \$50,000
Total Direct State Services Appropriation,
Veterans's Program Support \$50,000

Direct State Services:

Special Purpose:

50 Study of Veterans' Needs (\$50,000)

The amount appropriated hereinabove for the Department of Military and Veterans' Affairs shall be used exclusively to fund a contract to study the needs of veterans in this State related to the: replacement of the New Jersey Veterans' Memorial Home at Vineland, a long-term care licensed nursing home, with a new health care facility; provision of alternative

services to institutional long-term care for veterans and other eligible individuals, including, but not limited to, assisted living, adult day care, respite care, and home health care; utilization rates of assisted living programs and such other services and facilities as the department may determine; and various available options to finance and operate various programs for veterans through public or private, or a combination of public and private, means. The study shall cover the needs of veterans Statewide, but with an emphasis on the needs of veterans in southern New Jersey.

2. This act shall take effect immediately.

Approved August 20, 2001.

CHAPTER 215

AN ACT concerning law enforcement officers and amending N.J.S.2C:12-1.

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

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

Assault.

2C:12-1. Assault. a. Simple assault. A person is guilty of assault if he:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon;

or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

(1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or

(2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

(3) Recklessly causes bodily injury to another with a deadly weapon; or

(4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f.,

at or in the direction of another, whether or not the actor believes it to be loaded; or

(5) Commits a simple assault as defined in subsection a. (1), (2) or (3) of this section upon:

(a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority or because of his status as a law enforcement officer; or

(b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or

(c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or

(d) Any school board member, school administrator, teacher, school bus driver or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board or any school bus driver employed by an operator under contract to a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a school bus driver; or

(e) Any employee of the Division of Youth and Family Services while clearly identifiable as being engaged in the performance of his duties or because of his status as an employee of the division; or

(f) Any justice of the Supreme Court, judge of the Superior Court, judge of the Tax Court or municipal judge while clearly identifiable as being engaged in the performance of judicial duties or because of his status as a member of the judiciary; or

(g) Any operator of a motorbus or the operator's supervisor or any employee of a rail passenger service while clearly identifiable as being engaged in the performance of his duties or because of his status as an operator of a motorbus or as the operator's supervisor or as an employee of a rail passenger service; or

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily injury to another person; or

(7) Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury; or

(8) Causes bodily injury by knowingly or purposely starting a fire or causing an explosion in violation of N.J.S.2C:17-1 which results in bodily injury to any emergency services personnel involved in fire suppression activities, rendering emergency medical services resulting from the fire or explosion or rescue operations, or rendering any necessary assistance at the scene of the fire or explosion, including any bodily injury sustained while responding to the scene of a reported fire or explosion. For purposes of this subsection, "emergency services personnel" shall include, but not be limited to, any paid or volunteer fireman, any person engaged in emergency first-aid or medical services and any law enforcement officer. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this paragraph upon proof of a violation of N.J.S.2C:17-1 which resulted in bodily injury to any emergency services personnel; or

(9) Knowingly, under circumstances manifesting extreme indifference to the value of human life, points or displays a firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer; or

(10) Knowingly points, displays or uses an imitation firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose; or

(11) Uses or activates a laser sighting system or device, or a system or device which, in the manner used, would cause a reasonable person to believe that it is a laser sighting system or device, against a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. As used in this paragraph, "laser sighting system or device" means any system or device that is integrated with or affixed to a firearm and emits a laser light beam that is used to assist in the sight alignment or aiming of the firearm.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2), b. (7), b. (9) and b. (10) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree. Aggravated assault under subsection b.(8) is a crime of the third degree if the victim suffers bodily injury; if the victim suffers significant bodily injury

or serious bodily injury it is a crime of the second degree. Aggravated assault under subsection b.(11) is a crime of the third degree.

c. (1) A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

(2) Assault by auto or vessel is a crime of the third degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results and is a crime of the fourth degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

(3) Assault by auto or vessel is a crime of the second degree if serious bodily injury results from the defendant operating the auto or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

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

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

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

Assault by auto or vessel is a crime of the third degree if bodily injury results from the defendant operating auto or vessel in violation of this paragraph.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under subparagraph (a) of paragraph (3) of this section.

It shall be no defense to a prosecution for a violation of subparagraph (a) or (b) of paragraph (3) of this subsection that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be a defense to a prosecution under subparagraph (a) or (b) of paragraph (3) of this subsection that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. A person who commits a simple assault as defined in subsection a. of this section is guilty of a crime of the fourth degree if the person acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

2. This act shall take effect immediately.

Approved August 20, 2001.

CHAPTER 216

AN ACT concerning the commission of crimes involving firearms and amending P.L.1979, c.179.

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

1. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as follows:

C.2C:39-7 Certain persons not to have weapons.

6. Certain Persons Not to Have Weapons.

a. Except as provided in subsection b. of this section, any person, having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the

unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree.

b. A person having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person having been convicted of a crime pursuant to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or controls a firearm is guilty of a crime of the second degree and upon conviction thereof, the person shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term, which shall be fixed at five years, during which the defendant shall be ineligible for parole. If the defendant is sentenced to an extended term of imprisonment pursuant to N.J.S. 2C:43-7, the extended term of imprisonment shall include the imposition of a minimum term, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

c. Whenever any person shall have been convicted in another state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, in a court of competent jurisdiction, of a crime which in said other jurisdiction or country is comparable to one of the crimes enumerated in subsection a. or b. of this section, then that person shall be subject to the provisions of this section.

2. This act shall take effect immediately.

Approved August 21, 2001.

CHAPTER 217

AN ACT concerning voluntary contributions through gross income tax returns to support AIDS services activities, supplementing chapter 9 of Title 54A of the New Jersey Statutes.

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

C.54A:9-25.19 NJ-AIDS Services Fund; tax return contribution.

1. a. There is established in the Department of the Treasury a special fund to be known as the "NJ-AIDS Services Fund."

b. Each taxpayer shall have the opportunity to indicate on the taxpayer's New Jersey gross income tax return that a portion of the taxpayer's tax refund or an enclosed contribution be deposited in the special fund.

c. Any costs incurred by the Division of Taxation for collection or administration attributable to this section may be deducted from the receipts collected pursuant to this section, as determined by the Director of the Division of Budget and Accounting in the Department of the Treasury. The State Treasurer shall deposit into the "NJ-AIDS Services Fund" net contributions collected pursuant to this section for distribution to the Commissioner of Health and Senior Services, for grants to agencies within the State assisting and supporting individuals living with HIV/AIDS.

d. The Legislature shall annually appropriate all funds deposited in the "NJ-AIDS Services Fund" to the Department of Health and Senior Services and the Department of the Treasury in accordance with the purposes and provisions of this act.

2. This act shall take effect immediately and apply to taxable years beginning on or after January 1 following enactment.

Approved August 24, 2001.

CHAPTER 218

AN ACT concerning the Division of State Police and supplementing Title 53 of the Revised Statutes.

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

C.53:1-10.1 Annual report on public complaints of misconduct by State Police.

1. It shall be the duty of the Superintendent of State Police to compile and submit to the Governor and the Legislature an annual report with regard to complaints of misconduct made by members of the public against members of the State Police. This report shall list the number of these complaints by category based on the nature and circumstances of each complaint. The report shall also indicate by category the results of any investigation undertaken in response to a complaint by a member of the public and the nature of any disciplinary action, that resulted from that investigation. The report shall be a statistical compilation and shall not

disclose personal identifiers of either the complainant or the member of the State Police.

2. This act shall take effect immediately.

Approved August 24, 2001.

CHAPTER 219

AN ACT concerning police tampering with electronic equipment and amending N.J.S.2C:28-7.

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

1. N.J.S.2C:28-7 is amended to read as follows:

Tampering with public records or information.

2C:28-7. Tampering with public records or information. a. Offense defined. A person commits an offense if he:

(1) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) Makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (1); or

(3) Purposely and unlawfully destroys, conceals, removes, mutilates, or otherwise impairs the verity or availability of any such record, document or thing.

b. Grading. An offense under subsection a. is a disorderly persons offense unless the actor's purpose is to defraud or injure anyone, in which case the offense is a crime of the third degree.

c. A person commits a crime of the fourth degree if he purposely and unlawfully alters, destroys, conceals, removes or disables any camera or other monitoring device including any videotape, film or other medium used to record sound or images that is installed in a patrol vehicle.

2. This act shall take effect immediately

Approved August 24, 2001.

CHAPTER 220

AN ACT concerning certain criminal activities and amending N.J.S. 2C:1-14 and P.L.1992, c.209.

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

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

Definitions.

2C:1-14. In this code, unless a different meaning plainly is required:

- a. "Statute" includes the Constitution and a local law or ordinance of a political subdivision of the State;
- b. "Act" or "action" means a bodily movement whether voluntary or involuntary;
- c. "Omission" means a failure to act;
- d. "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;
- e. "Actor" includes, where relevant, a person guilty of an omission;
- f. "Acted" includes, where relevant, "omitted to act";
- g. "Person," "he," and "actor" include any natural person and, where relevant, a corporation or an unincorporated association;
- h. "Element of an offense" means (1) such conduct or (2) such attendant circumstances or (3) such a result of conduct as
 - (a) Is included in the description of the forbidden conduct in the definition of the offense;
 - (b) Establishes the required kind of culpability;
 - (c) Negatives an excuse or justification for such conduct;
 - (d) Negatives a defense under the statute of limitations; or
 - (e) Establishes jurisdiction or venue;
- i. "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (1) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (2) the existence of a justification or excuse for such conduct;
- j. "Reasonably believes" or "reasonable belief" designates a belief the holding of which does not make the actor reckless or criminally negligent;
- k. "Offense" means a crime, a disorderly persons offense or a petty disorderly persons offense unless a particular section in this code is intended to apply to less than all three;
- l. (Deleted by amendment, P.L.1991, c.91).

m. "Amount involved," "benefit," and other terms of value. Where it is necessary in this act to determine value, for purposes of fixing the degree of an offense, that value shall be the fair market value at the time and place of the operative act.

n. "Motor vehicle" shall have the meaning provided in R.S.39:1-1.

o. "Unlawful taking of a motor vehicle" means conduct prohibited under N.J.S.2C:20-10 when the means of conveyance taken, operated or controlled is a motor vehicle.

p. "Research facility" means any building, laboratory, institution, organization, school, or person engaged in research, testing, educational or experimental activities, or any commercial or academic enterprise that uses warm-blooded or cold-blooded animals for food or fiber production, agriculture, research, testing, experimentation or education. A research facility includes, but is not limited to, any enclosure, separately secured yard, pad, pond, vehicle, building structure or premises or separately secured portion thereof.

q. "Communication" means any form of communication made by any means, including, but not limited to, any verbal or written communication, communications conveyed by any electronic communication device, which includes but is not limited to, a wire, radio, electromagnetic, photoelectric or photo-optical system, telephone, including a cordless, cellular or digital telephone, computer, video recorder, fax machine, pager, or any other means of transmitting voice or data and communications made by sign or gesture.

2. Section 1 of P.L.1992, c.209 (C.2C:12-10) is amended to read as follows:

C.2C:12-10 Definitions; stalking designated a crime; degrees.

1. a. As used in this act:

(1) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) "Repeatedly" means on two or more occasions.

(3) "Immediate family" means a spouse, parent, child, sibling or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury

to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

f. This act shall not apply to conduct which occurs during organized group picketing.

3. This act shall take effect immediately.

Approved August 24, 2001.

CHAPTER 221

AN ACT concerning the Casino Reinvestment Development Authority and urban revitalization, amending and supplementing P.L.1984, c.218 (C.5:12-144.1 et seq.) and amending P.L.1991, c.376.

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

C.5:12-173.9 Short title.

1. Sections 1 through 13 of P.L.2001, c.221 (C.5:12-173.9 et seq.) shall be known and may be referred to as the "Casino Reinvestment Development Authority Urban Revitalization Act."

C.5:12-173.10 Findings, declaration relative to CRDA urban revitalization program.

2. The Legislature finds and declares that:

a. Legalized casino gambling was approved by New Jersey's voters in 1976 as a "unique tool of urban redevelopment" to facilitate the revitalization of Atlantic City and other distressed municipalities throughout the State;

b. The Legislature created the Casino Reinvestment Development Authority (the "CRDA") to oversee the investment of casino gambling revenues for development projects in Atlantic City and other areas throughout the State;

c. During the past 25 years, the development of Atlantic City's multi-billion dollar casino industry and the CRDA's investment of hundreds of millions of dollars in housing, commercial and nonprofit projects have greatly benefited the people of New Jersey and have served as a model for many other states and countries that wished to emulate Atlantic City's successful record of casino development and economic growth;

d. It is altogether fitting and proper on the occasion of the 25th year of legalized casino gaming in Atlantic City to establish a new program to facilitate the next phase of Atlantic City's development into a regional, national and international "destination resort" and at the same time, to insure that substantial commitments are made to projects to revitalize urban areas and promote continued economic growth throughout the State.

C.5:12-173.11 Definitions relative to CRDA urban revitalization incentive program.

3. As used in this act:

"Authority" means the Casino Reinvestment Development Authority established pursuant to P.L.1984, c.218 (C.5:12-153 et seq.);

"Baseline luxury tax revenue amount" or "baseline luxury tax" means the annual amount of luxury tax receipts received pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.) from the taxation of retail sales or sales at retail originating from transactions at an entertainment-retail district project for the last full calendar year preceding the year in which the district project opens under the incentive program;

"Casino hotel room fee fund" or "room fund" means the fund established by the State Treasurer pursuant to section 8 of P.L.2001, c.221 (C.5:12-173.16) into which shall be deposited the proceeds of the hotel room use fees as specified pursuant to section 6 of P.L.2001, c.221 (C.5:12-173.14);

"Casino reinvestment development authority urban revitalization incentive program" or "incentive program" means the program established pursuant to section 4 of P.L.2001, c.221 (C. 5:12-173.12) and administered by the authority to facilitate the development of entertainment-retail districts for the city of Atlantic City and to promote urban revitalization throughout the State;

"Commissioner" means the Commissioner of Community Affairs;

"Department" means the Department of Community Affairs;

"District project grant" or "grant" means an amount rebated to the authority pursuant to sections 7 or 8 of P.L.2001, c.221 (C.5:12-173.15 or 5:12-173.16) for disbursement to a casino licensee that is approved by the authority for a district project or for retention by the authority for an approved district project sponsored by the authority;

"Entertainment-retail district" or "district" means one of six areas within Atlantic City, designated by the authority under the incentive program;

"Entertainment-retail district project" or "district project" means a project or projects to be developed by the authority or any casino licensed to operate in Atlantic City prior to January 1, 2001, including, but not necessarily limited to, a minimum of 150,000 square feet of public space, retail stores, entertainment venues and restaurants, and may include, in addition, casino hotels and public parking facilities approved by the authority under the incentive program, and may also include: the purchasing, leasing, condemning, or otherwise acquiring of land or other property, or an interest therein, approved by the authority pursuant to a project grant agreement or as an authority sponsored project, or as necessary for a right-of-way or other easement to or from the land or property, or the relocating and moving of persons displaced by the acquisition of the land or property; the rehabilitation and redevelopment of land or property, approved pursuant to a project grant agreement or as an authority sponsored project, including demolition, clearance, removal, relocation, renovation, alteration, construction, reconstruction, installation or repair of a building, street, highway, alley, utility, service or other structure or improvement; the acquisition, construction, reconstruction, rehabilitation, or installation of parking and other improvements approved pursuant to a project grant agreement or as an authority sponsored project; and the costs associated therewith including the costs of an administrative appraisal, economic and environmental analyses or engineering, planning, design, architectural, surveying or other professional services approved pursuant to a project grant agreement or as part of an authority sponsored project;

"Entertainment-retail district project fund" or "project fund" means the fund established by the State Treasurer pursuant to section 7 of P.L.2001, c.221 (C.5:12-173.15) into which shall be deposited an amount equivalent to the amount of receipts received from the taxation of retail sales from a district project and from the taxation of construction materials used for building a district project, as specified pursuant to section 5 of P.L.2001, c.221 (C.5:12-173.13);

"Incremental luxury tax revenue amount" or "incremental luxury tax" means the amount by which the annual luxury tax receipts received pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.) from the taxation of retail sales or sales at retail originating from transactions at a district project in the year in which the district project opens under the incentive program, and in each year thereafter, exceed the baseline luxury tax, as determined by the State Treasurer; and

"Project grant agreement" means an agreement entered into between the authority and a casino licensee, pursuant to section 4 of P.L.2001, c.221

(C.5:12-173.12), that sets forth the terms and conditions of approval for a district project and of eligibility for district project grants, as determined by the authority.

C.5:12-173.12 Urban revitalization incentive program.

4. a. There is established the incentive program that shall be administered by the authority. The purpose of the incentive program is to facilitate the development of entertainment-retail districts for the city of Atlantic City and to promote revitalization of other urban areas in the State. The provisions of section 30 of P.L.1984, c.218 (C.5:12-178) shall not apply to the incentive program established pursuant to this section. In order to implement the incentive program, the authority is authorized to accept applications from casino licensees on or before September 1, 2001 for approval of a district project and to designate by resolution up to six districts on or before September 30, 2001 and to enter into project grant agreements with casino licensees to develop district projects within each district or to approve a district project sponsored by the authority. The authority may disburse district project grants in accordance with sections 7 and 8 of P.L.2001, c.221 (C.5:12-173.15 and 5:12-173.16) to casino licensees with approved district projects or to the authority for an authority sponsored district project under the incentive program, if the authority determines that:

(1) construction of the district project will commence no later than June 30, 2002 or as otherwise provided pursuant to the project grant agreement with the authority, or pursuant to the district project plan approved by the authority for an authority sponsored district project;

(2) a proposed district project plan submitted pursuant to section 10 of P.L.2001, c.221 (C.5:12-173.18) is economically sound and will assist in the overall development of the city of Atlantic City and will benefit the people of New Jersey by increasing employment opportunities and strengthening New Jersey's economy;

(3) the disbursement of grants to a casino licensee is a material factor in the licensee's decision to go forward with a district project; and

(4) the casino licensee has agreed to invest a minimum of \$20 million in its investment alternative tax obligations under section 3 of P.L.1984, c.218 (C.5:12-144.1), such obligation to be made in \$10 million increments to one or more entertainment-retail projects, or housing and community development projects, approved by the authority and the department, in an urban area outside of Atlantic City, and designated by the commissioner as eligible for, and in need of the project, pursuant to section 11 of P.L.2001, c.221 (C.5:12-173.19).

b. Notwithstanding any provision to the contrary in P.L.2001, c.221 (C.5:12-173.9 et al.), the authority and the commissioner jointly may, in their discretion, also designate two entertainment-retail projects, one in North Jersey and one in South Jersey, as eligible for funds under the incentive program.

C.5:12-173.13 Deposit of sales and use tax revenues.

5. a. Notwithstanding the provisions of any law, rule or regulation to the contrary, all revenues received pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from the taxation of construction materials used for building a district project approved by the authority pursuant to a project grant agreement or for building a district project sponsored by the authority, and from the taxation of retail sales of tangible personal property and services originating from and delivered from business locations in a district project approved by the authority pursuant to a project grant agreement or from business locations in a district project sponsored by the authority, shall be deposited immediately upon collection by the Department of the Treasury in the project fund. Contractors purchasing materials and supplies for use in constructing a district project shall complete a form or certification prescribed by the Director of the Division of Taxation in the Department of the Treasury. The contractor shall identify the district project, materials, supplies, purchase price and New Jersey sales or use tax paid and provide such other information and receipts as the director may require. The forms or certificates shall be filed with the authority as documentation for a report, which the authority shall provide to the Division of Revenue and the Division of Taxation for revenue certification purposes. Approved casino licensees shall also provide to the authority, on a form prescribed by the Director of the Division of Taxation, the sales tax collected from sales made by vendors in a district project for each quarter. The authority shall provide a report to the Division of Revenue and Division of Taxation in the Department of the Treasury for revenue certification purposes.

b. The revenues required to be deposited in the project fund under subsection a. of this section shall be used for the purposes of the project fund and for the uses prescribed in section 7 of P.L.2001, c.221 (C.5:12-173.15).

C.5:12-173.14 Deposit of hotel room use fee revenues.

6. a. Notwithstanding the provisions of any law, rule or regulation to the contrary, all revenues received from hotel room use fees pursuant to P.L.1991, c.376 (C.40:48-8.45 et seq.), which originate from and are delivered from the casino-hotel facilities of the casino licensee with an approved district project, or of any casino licensee that has the same holding

company as the casino licensee with the approved district project, pursuant to a project grant agreement, and in the case of a district project sponsored by the authority, all revenues received from the hotel room use fees which originate from and are delivered from hotel facilities located within the authority sponsored district project and designated as part of the approved district project, and if applicable, from additional hotel rooms that are approved by the authority as part of the district project, shall be paid immediately upon collection to the Department of the Treasury which shall deposit the revenues into the room fund.

b. The revenues required to be deposited in the room fund under subsection a. of this section shall be used for the purposes of the room fund and for the uses prescribed in section 8 of P.L.2001, c.221 (C.5:12-173.16).

C.5:12-173.15 Project fund created.

7. a. There is created a dedicated, nonlapsing project fund to be held by the State Treasurer, which shall be the repository for all moneys required to be deposited therein under section 5 of P.L.2001, c.221 (C.5:12-173.13) and any moneys appropriated or otherwise made available to the project fund.

b. All moneys deposited in the project fund shall be held and disbursed, subject to the requirements of section 11 of P.L.2001, c.221 (C.5:12-173.19), in the form of district project grants as follows:

(1) an amount from the project fund equivalent to the total revenues received pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from the taxation of construction materials used for building a district project approved by the authority pursuant to a project grant agreement, or for building a district project sponsored by the authority, shall be rebated in the form of a one-time grant to the authority for disbursement to the casino licensee with an approved district project or to the authority for an authority sponsored district project;

(2) an amount from the project fund equivalent to the total revenues received pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from the taxation of retail sales of tangible property and services originating from and delivered from business locations in a district project approved by the authority pursuant to a project grant agreement or from business locations in a district project sponsored by the authority, shall be rebated in the form of annual grants to the authority for disbursement to the casino licensee with an approved district project, or to the authority for an authority sponsored district project, with each annual grant not to exceed \$2.5 million per district project and payable annually until December 31, 2022, or until the date on which the combined total of grants disbursed under this section and under section 8 of P.L.2001, c.221

(C.5:12-173.16) equals the approved cost of the district project, as determined by the authority, whichever is earlier;

(3) the balance of the revenues in the project fund shall be deposited in the General Fund if the authority, in consultation with the State Treasurer, determines that the revenues are no longer needed for the purposes of the project fund or for the uses prescribed in P.L.2001, c.221 (C.5:12-173.9 et al.).

c. The State Treasurer may invest and reinvest any moneys in the project fund, or any portion thereof, in legal obligations of the United States or of the State or any political subdivision thereof. Any income from, interest on, or increment to moneys so invested or reinvested shall be included in the project fund.

C.5:12-173.16 Room fund created.

8. a. There is created a dedicated, nonlapsing room fund to be held by the State Treasurer, which shall be the repository for all moneys required to be deposited therein under section 6 of P.L.2001, c.221 (C.5:12-173.14) and any moneys appropriated or otherwise made available to the room fund.

b. All moneys deposited in the room fund shall be held and disbursed, subject to the requirements of section 11 of P.L.2001, c.221 (C.5:12-173.19), in the form of district projects grants as follows:

(1) an amount from the room fund equivalent to the incremental luxury tax for a district project approved by the authority pursuant to a project grant agreement or for a district project sponsored by the authority, shall be rebated in the form of annual grants from the room fund to the authority for disbursement to the casino licensee with an approved district project, or to the authority for an authority sponsored district project, and shall be payable annually until December 31, 2022, or until the date on which the combined total of grants disbursed under this section and under section 7 of P.L.2001, c.221 (C.5:12-173.15) equals the approved cost of the district project, as determined by the authority, whichever is earlier;

(2) the balance of the revenues in the room fund shall be deposited in the special fund established pursuant to section 3 of P.L.1991, c.376 (C.40:48-8.47) if the authority, in consultation with the State Treasurer, determines that the revenues are no longer needed for the purposes of the room fund or for the uses prescribed in P.L.2001, c.221 (C.5:12-173.9 et al.).

c. The State Treasurer may invest and reinvest any moneys in the room fund, or any portion thereof, in legal obligations of the United States or of the State or any political subdivision thereof. Any income from, interest on, or increment to moneys so invested or reinvested shall be included in the room fund.

C.5:12-173.17 Separate accounts within project, room funds.

9. a. The State Treasurer shall maintain separate accounts in the project fund and room fund for each casino licensee approved by the authority for a district project, and for the authority in the event the authority sponsors a district project, and shall credit to each account an amount of the moneys deposited in each fund equal to the appropriate share of revenues collected from the taxation of construction materials and retail sales and services, as provided in section 7 of P.L.2001, c.221 (C.5:12-173.15), and from hotel room fees, as provided in section 8 of P.L.2001, c.221 (C.5:12-173.16), or that amount of moneys appropriated to the funds or otherwise made available to the funds, and required to be credited to the casino licensee's or the authority's project fund account or room fund account.

b. The Director of the Division of Taxation in consultation with the State Treasurer shall promulgate such rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to govern the administration of the project fund and room fund for the purposes of P.L.2001, c.221 (C.5:12-173.9 et al.). In addition, the Director of the Division of Taxation and the Director of the Division of Revenue are authorized to prescribe forms and procedures and to require any person to provide any information necessary to enforce and administer the provisions of this act.

c. The amount necessary to provide for tax collection, administrative and enforcement costs incurred by the Division of Taxation and the Division of Revenue, to meet the requirements of P.L.2001, c.221 (C.5:12-173.9 et al.) shall be annually appropriated from the project fund and the room fund, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

C.5:12-173.18 Proposed district project plan.

10. a. A casino licensee or the authority, as appropriate, shall submit a proposed district project plan for approval by the authority under the incentive program.

b. A proposed district project plan submitted under subsection a. of this section shall include, but not necessarily be limited to:

- (1) A description of the proposed district project;
- (2) An estimate of the total project costs and an estimate of the annual amounts of district project grants anticipated under the incentive program for the casino licensee or the authority;
- (3) A statement of any other revenue sources to be used to finance the development of a district project;
- (4) A statement of the time needed to complete a district project; and

(5) A statement of the impact that the proposed district project is expected to have on the city of Atlantic City.

C.5:12-173.19 Proposal for entertainment-retail project, community and housing development project.

11. a. A casino licensee shall submit a proposal to the authority and to the department for an entertainment- retail project or community and housing development project in an urban area outside of Atlantic City, consistent with the requirements of paragraph (4) of subsection a. of section 4 of P.L.2001, c.221 (C.5:12-173.12), that will further the development and revitalization of an urban area designated by the department as eligible for, and in need of, the proposed project. The department shall evaluate the proposal and determine whether the proposed project meets the department's project criteria, and the authority shall evaluate the proposal and determine whether the proposal project meets the authority's project criteria for approval of urban development projects outside of the city of Atlantic City under the incentive program. The authority and the commissioner jointly may, in their discretion, also designate two entertainment-retail projects, one in North Jersey and one in South Jersey, as eligible for funds under the incentive program.

b. The commissioner and the authority are authorized to approve the proposed project submitted under subsection a. of this section if the commissioner and the authority determine that the project meets the criteria established by the department and the authority, respectively. Upon approval by the commissioner, the State Treasurer shall annually, upon receipt of a written statement from the department certifying the satisfactory status of the project, rebate the district project grants to the authority for disbursement to casino licensees under the incentive program.

c. The authority and the commissioner shall give preference to those proposed projects that best leverage non-authority funds for the total construction project cost.

C.5:12-173.20 Authority sponsored project.

12. Notwithstanding any provision to the contrary in P.L.2001, c.221 (C.5:12-173.9 et al.), in the event that fewer than six district projects are proposed by casino licensees, and approved by the authority, the authority may sponsor a district project which meets the criteria of paragraphs (1) and (2) of subsection a. of section 4 of P.L.2001, c.221 (C.5:12-173.12), and in that event, paragraphs (3) and (4) of subsection a. of section 4 of P.L.2001, c.221 (C.5:12-173.12) are not applicable to the authority and the grants otherwise payable to a casino licensee pursuant to paragraphs (1) and (2) of subsection b. of section 7 and paragraph (1) of subsection b. of section 8 of

P.L.2001, c.221 (C.5:12-173.15 and 5:12-173.16) shall be payable to the authority.

C.5:12-173.21 Termination of investment alternative tax for licensed facility.

13. a. Notwithstanding the provisions of any other law to the contrary, if a district project of a casino licensee is approved by the authority under the incentive program established by section 4 of P.L.2001, c.221 (C.5:12-173.12), the investment alternative tax imposed by subsection a. of section 3 of P.L.1984, c.218 (C.5:12-144.1), and any credits which may by law be applied against that tax, shall end for the casino licensee's licensed facility, as determined by the authority, 35 years after any investment alternative tax obligation is first incurred in connection with the licensed facility operated by the licensee.

b. During the additional five years of a casino licensee's investment alternative tax obligations required pursuant to subsection a. of this section, the total of the proceeds of all bonds purchased by a licensee from or through the authority and all approved investments in eligible projects by a licensee shall be devoted to the financing of projects in the following areas and amounts: a) 25% for the city of Atlantic City; b) 25% for South Jersey and c) 50% for North Jersey.

14. Section 3 of P.L.1984, c.218 (C.5:12-144.1) is amended to read as follows:

C.5:12-144.1 Imposition of investment alternative tax.

3. a. (1) Commencing with the first annual tax return of a licensee for any calendar year beginning after December 31, 1983, there is imposed an investment alternative tax on the gross revenues as defined in section 24 of P.L.1977, c.110 (C.5:12-24) of the licensee in the amount of 2.5% of those gross revenues. The tax imposed with respect to each calendar year shall be due and payable on the last day of April next following the end of the calendar year. The State Treasurer shall have a lien against the property constituting the casino of a licensee for the amount of any tax not paid when due. No tax shall be imposed, however, on the gross revenues received by a licensee during the first 12 months of the operation of any casino that commences operation after January 1, 1984, but prior to the effective date of this act, P.L.1996, c.118 (C.5:12-173.3a et al.).

(2) A licensee shall pay to the State Treasurer on or before the 15th day of the first, fourth, seventh, and 10th months of each year as partial payment of the investment alternative tax imposed pursuant to paragraph (1) of this subsection an amount equal to 1.25% of the estimated gross revenues for the three-month period immediately preceding the first day of those months. The moneys received shall be placed in an escrow account and shall be held

until the licensee directs that the moneys be transferred to the Casino Reinvestment Development Authority for the purchase of bonds issued by or offered through the Casino Reinvestment Development Authority or pursuant to a contract for such a purchase, be made available to the licensee for a direct investment approved by the authority, or be transferred to the Casino Revenue Fund as partial payment of the investment alternative tax imposed pursuant to paragraph (1) of this subsection. Any interest derived from the moneys in the escrow account shall be paid or made available to the Casino Revenue Fund. If a licensee fails to pay the amount due or underpays by an unjustifiable amount, the Casino Control Commission shall impose a fine of 5% of the amount due or of the underpayment, as the case may be, for each month or portion thereof the licensee is in default of payment, up to 25% of the amount in default. Any fine imposed shall be paid to the Casino Reinvestment Development Authority and shall be used for the purposes of this 1984 amendatory and supplementary act.

b. Each licensee shall be entitled to an investment tax credit against the tax imposed by subsection a. of this section, provided the licensee shall pay over the moneys required pursuant to section 5 of P.L.1993, c.159 (C.5:12-173.5): (1) for the first 10 years of a licensee's tax obligation, in an amount equal to twice the purchase price of bonds issued by the Casino Reinvestment Development Authority pursuant to sections 14 and 15 of this 1984 amendatory and supplementary act, purchased by the licensee, or twice the amount of the investments authorized in lieu thereof, and (2) for the remainder of a licensee's tax obligation, in an amount equal to twice the purchase price of bonds issued by the Casino Reinvestment Development Authority pursuant to sections 14 and 15 of this 1984 amendatory and supplementary act, purchased by the licensee, or twice the amount of the investments authorized in lieu thereof, and twice the amount of investments made by a licensee in other approved eligible investments made pursuant to section 25 of this act. The Casino Reinvestment Development Authority shall have the power to enter into a contract or contracts with a licensee pursuant to which the Casino Reinvestment Development Authority agrees to issue and sell bonds to the licensee, and the licensee agrees to purchase the bonds issued by or offered through the Casino Reinvestment Development Authority, in annual purchase price amounts as will constitute a credit against at least 50% of the tax to become due in any future year or years. The contract may contain those terms and conditions relating to the terms of the bonds and to the issuance and sale of the bonds to the licensee as the Casino Reinvestment Development Authority shall deem necessary or desirable. The contract shall not be deemed to be in violation of section 104 of P.L.1977, c.110 (C.5:12-104). After the first 10 years of a licensee's investment alternative tax obligation, a licensee will have the option of

entering into a contract with the Casino Reinvestment Development Authority to have its tax credit comprised of direct investments in approved eligible projects. These direct investments shall not comprise more than 50% of a licensee's eligible tax credit in any one year.

The entering of a contract pursuant to this section shall be sufficient to entitle a licensee to an investment tax credit for the appropriate tax year.

c. A contract entered into between a licensee and the Casino Reinvestment Development Authority may provide for a deferral of payment for and delivery of bonds required to be purchased and for a deferral from making approved eligible investments in any year, but no deferral shall occur more than two years consecutively. A deferral of payment for any bonds required to be purchased by a licensee and a deferral from making approved eligible investments may be granted by the Casino Reinvestment Development Authority only upon a determination by the Casino Control Commission that purchase of these bonds or making approved eligible investments would cause extreme financial hardship to the licensee and a determination by the Casino Reinvestment Development Authority that the deferral of the payment would not violate any covenant or agreement or impair any financial obligation of the Casino Reinvestment Development Authority. The contract may establish a late payment charge to be paid in the event of deferral or other late payment at a rate as shall be agreed to by the Casino Reinvestment Development Authority. If a deferral of purchase or investment is granted, the licensee shall be deemed to have made the purchase or investment at the time required by the contract, except that if the purchase is not made at the time to which the purchase or investment was deferred, then the licensee shall be deemed not to have made the purchase or investment. The Casino Control Commission shall adopt regulations establishing a uniform definition of extreme financial hardship applicable to all these contracts. If a licensee petitions the Casino Reinvestment Development Authority for a deferral, the Casino Reinvestment Development Authority shall give notice of that petition to the Casino Control Commission and to the Division of Gaming Enforcement within three days of the filing of the petition. The Casino Control Commission shall render a decision within 60 days of notice as to whether the licensee has established extreme financial hardship, after consultation with the Division of Gaming Enforcement. The Casino Reinvestment Development Authority shall render a decision as to the availability of the deferral within 10 days of the receipt by it of the decision of the Casino Control Commission and shall notify the Division of Gaming Enforcement and the Casino Control Commission of that decision. If a deferral is granted, the Casino Reinvestment Development Authority may determine whether the purchases or investments shall be made in a lump sum, made over a period of years, or

whether the period of obligation shall be extended an additional period of time equivalent to the period of time deferred.

d. The license of any licensee which has defaulted in its obligation to make any purchase of bonds or investment in any approved eligible project under a contract entered into pursuant to subsection b. of this section for a period of 90 days may be suspended by the Casino Control Commission until that purchase is made or deferred in accordance with subsection b. of this section, or a fine or other penalty may be imposed upon the licensee by the commission. If the Casino Control Commission elects not to suspend the license of a licensee after the licensee has first defaulted in its obligation but instead imposes some lesser penalty and the licensee continues to be in default of its obligation after a period of 30 additional days and after any additional 30-day period, the commission may impose another fine or penalty upon the licensee, which may include suspension of that licensee's license. The fine shall be 5% of the amount of the obligation owed for each month or portion thereof a licensee is in default, up to 25% of that obligation; shall be paid to the Casino Reinvestment Development Authority; and shall be used for the purposes of this 1984 amendatory and supplementary act.

e. A contract entered into by a licensee and the Casino Reinvestment Development Authority pursuant to subsection b. of this section may provide that after the first 10 years of a licensee's investment alternative tax obligation imposed by subsection a. of this section, the Casino Reinvestment Development Authority may repurchase bonds previously sold to the licensee, which were issued after the 10th year of a licensee's investment alternative tax obligation, by the Casino Reinvestment Development Authority, if the Casino Reinvestment Development Authority determines that the repurchase will not violate any agreement or covenant or impair any financial obligation of the Casino Reinvestment Development Authority and that the licensee will reinvest the proceeds of the resale in an eligible project approved by the Casino Reinvestment Development Authority.

f. (1) During the 30 years a licensee is obligated to pay an investment alternative tax pursuant to subsection k. of this section, the total of (a) the proceeds of all bonds purchased by a licensee from or through the Casino Reinvestment Development Authority and (b) all approved investments in eligible projects by a licensee shall be devoted to the financing of projects in the following areas and amounts:

Areas	Yrs. 1-3	Yrs. 4-5	Yrs. 6-10	Yrs. 11-15	Yrs. 16-20	Yrs. 21-25	Yrs. 26-30
a) Atlantic City	100%	90%	80%	50%	30%	20%	
b) South Jersey		8%	12%	28%	43%	45%	

c) North Jersey	2%	8%	22%	27%	35%	35%
d) Atlantic City through the Atlantic City Fund						65%,

except that, with respect to the obligations for calendar years 1994 through 1998, the amount allocated for the financing of projects in North Jersey from each casino licensee's obligation shall be the amount allocated for calendar year 1993, and the difference between that amount and the amount to be allocated to North Jersey, on the basis of the above schedule, from each casino licensee's obligations for calendar years 1994 through 1998 shall be paid into or credited to the Atlantic City Fund established by section 44 of P.L.1995, c.18 (C.5:12-161.1) and be devoted to the financing of projects in Atlantic City through that fund. For the purposes of this paragraph, "South Jersey" means the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem; and "North Jersey" means the remaining 12 counties of the State. For the purposes of this 1984 amendatory and supplementary act, bond "proceeds" means all funds received from the sale of bonds and any funds generated or derived therefrom.

In the financing of projects outside Atlantic City, the Casino Reinvestment Development Authority shall give priority to the revitalization of the urban areas of this State in the ways specified in section 12 of this 1984 amendatory and supplementary act. Those areas shall include, but not be limited to, all municipalities qualifying for aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).

Within nine months from the effective date of this 1984 amendatory and supplementary act, the Casino Reinvestment Development Authority shall determine the allocation of projected available moneys to municipalities in South Jersey for the first seven years of their receipt of funds, giving priority to the revitalization of the urban areas of the region. Municipalities receiving such an allocation shall present to the Casino Reinvestment Development Authority for its approval comprehensive plans or projects for which the allocations shall be used. Any such comprehensive plan or project may be submitted to the Casino Reinvestment Development Authority for a determination of eligibility at any time prior to the year for which the funds are allocated, and the Casino Reinvestment Development Authority shall make a determination of eligibility of the plan or project within a reasonable amount of time. If the Casino Reinvestment Development Authority makes a positive determination of eligibility for any comprehensive plan or project, or combination of comprehensive plans or projects, for any municipality whose total cost exceeds the amount allocated to that municipality for the first seven years of the receipt of funds by South Jersey municipalities, the Casino Reinvestment Development Authority

shall make available sufficient funds in subsequent years necessary to complete those plans or projects, or to complete that portion of the plan or project originally agreed to be funded through the Casino Reinvestment Development Authority, from funds received by the Casino Reinvestment Development Authority in the years following the seventh year of the receipt of funds by South Jersey municipalities. If the comprehensive plan or project is determined by the Casino Reinvestment Development Authority not to be an eligible plan or project, the municipality may submit any other comprehensive plan or project for a determination of eligibility. If, however, the municipality fails to receive a positive determination of eligibility for any comprehensive plan or project, or combination of comprehensive plans or projects, sufficient to exhaust the total allocation to that municipality for any year prior to April 30 of the following year for which the allocation was made, the allocation to that municipality for that year shall cease, and the Casino Reinvestment Development Authority may apply those excess funds to any other comprehensive plan or project in any other municipality in the region whose comprehensive plan or project has received a positive determination of eligibility by the Casino Reinvestment Development Authority.

Within 36 months from the effective date of this 1984 amendatory and supplementary act, the Casino Reinvestment Development Authority shall determine the allocation of projected available moneys to municipalities in North Jersey for the first five years of their receipt of funds, giving priority to the revitalization of the urban areas of the region. Municipalities receiving such an allocation shall present to the Casino Reinvestment Development Authority for its approval comprehensive plans or projects for which the allocations shall be used. Any such comprehensive plan or project may be submitted to the Casino Reinvestment Development Authority for a determination of eligibility at any time prior to the year for which the funds are allocated, and the Casino Reinvestment Development Authority shall make a determination of eligibility of the plan or project within a reasonable amount of time. If the Casino Reinvestment Development Authority makes a positive determination of eligibility for any comprehensive plan or project, or combination of comprehensive plans or projects, for any municipality whose total cost exceeds the amount allocated to that municipality for the first five years of the receipt of funds by North Jersey municipalities, the Casino Reinvestment Development Authority shall make available sufficient funds in subsequent years necessary to complete those plans or projects, or to complete that portion of the plan or project originally agreed to be funded through the Casino Reinvestment Development Authority, from funds received by the Casino Reinvestment Development Authority in the years following the fifth year of the receipt

of funds by North Jersey municipalities. If the comprehensive plan or project is determined by the Casino Reinvestment Development Authority not to be an eligible plan or project, the municipality may submit any other comprehensive plan or project for a determination of eligibility. If, however, the municipality fails to receive a positive determination of eligibility for any comprehensive plan or project, or combination of comprehensive plans or projects, sufficient to exhaust the total allocation to that municipality for any year prior to April 30 of the following year for which the allocation was made, the allocation to that municipality for that year shall cease, and the Casino Reinvestment Development Authority may apply those excess funds to any other comprehensive plan or project in any other municipality in the region whose comprehensive plan or project has received a positive determination of eligibility by the Casino Reinvestment Development Authority.

(2) Commencing with the first year in which a licensee incurs a tax obligation pursuant to this section, and for the period of two years thereafter, 100% of the proceeds of all bonds purchased by a licensee from the Casino Reinvestment Development Authority which are devoted to the financing of projects in the city of Atlantic City pursuant to paragraph (1) of this subsection shall be used exclusively to finance the rehabilitation, development, or construction of, or to provide mortgage financing of, housing facilities in the city of Atlantic City for persons or families of low through middle income, as defined in this subsection. For the purposes of this subsection, the "rehabilitation, development, or construction of housing facilities" shall include expenses attributable to site preparation, infrastructure needs and housing-related community facilities and services, including supporting commercial development. Commencing with the fourth year in which a licensee incurs a tax obligation pursuant to this subsection, 50% of the proceeds of all bonds purchased by a licensee from the Casino Reinvestment Development Authority which are devoted to the financing of projects in the city of Atlantic City shall be used exclusively to finance the rehabilitation, development, or construction of housing facilities in the city of Atlantic City for persons or families of low through middle income. Commencing with the 11th year in which a licensee incurs a tax obligation pursuant to this section, 50% of the annual aggregate of the proceeds of bonds purchased by a licensee from the Casino Reinvestment Development Authority which are devoted to the financing of projects in the city of Atlantic City and investments in approved eligible projects commenced by a licensee in the city of Atlantic City shall be used exclusively to finance the rehabilitation, development, or construction of, or to provide mortgage financing of, housing facilities in the city of Atlantic City for persons or families of low through middle income.

(3) The Legislature finds that it is necessary to provide for a balanced community and develop a comprehensive housing program. The Casino Reinvestment Development Authority shall determine the need for housing in the city of Atlantic City, in consultation with the city of Atlantic City and specifically its zoning and planning boards. This shall include determining the types and classes of housing to be constructed and the number of units of each type and class of housing to be built. The Casino Reinvestment Development Authority shall give priority to the housing needs of the persons and their families residing in the city of Atlantic City in 1983 and continuing such residency through the effective date of this 1984 amendatory and supplementary act. The actual percentage of the proceeds of bonds and investments in approved eligible projects commenced by a licensee in the city of Atlantic City, which shall be used exclusively to finance the rehabilitation, development, or construction of, or to provide mortgage financing of, housing facilities in the city of Atlantic City for persons or families of low through middle income, shall be based upon the authority's determination of the need for housing in the city of Atlantic City conducted pursuant to this subsection. Once the housing needs of the persons residing in the city of Atlantic City in 1983 and continuing such residency through the effective date of this 1984 amendatory and supplementary act have been met, as determined by the Casino Reinvestment Development Authority pursuant to this subsection, any required percentages for such housing in the city of Atlantic City may, in its sole discretion, be waived by the Casino Reinvestment Development Authority. To aid the Casino Reinvestment Development Authority in making these determinations, the Casino Reinvestment Development Authority shall review the proposal for a housing redevelopment program and strategy for the city of Atlantic City approved and adopted by the Casino Control Commission and shall give priority to same and any other plan or project which is consistent with the standards of this subsection and is acceptable to the Casino Reinvestment Development Authority, pursuant to section 25 of this 1984 amendatory and supplementary act. The Casino Reinvestment Development Authority may determine whether the funds used to finance housing facilities in the city of Atlantic City for persons or families of low, moderate, median range, and middle income are derived from the proceeds of bonds purchased by a licensee from the Casino Reinvestment Development Authority to be devoted to the financing of projects in the city of Atlantic City, investments in approved eligible projects commenced by a licensee in the city of Atlantic City, or a combination of both. Any investment made by a licensee in excess of 100% of its eligible investment tax credit during the first three years and in excess of 50% thereafter in either the purchase of bonds or direct investments in approved eligible projects for low, moderate, median

range, and middle income family housing facilities in the city of Atlantic City may be carried forward and credited against the licensee's obligation to make a 100% investment during the first three years and 50% thereafter in low, moderate, median range, and middle income family housing in any future year, with the approval of the Casino Reinvestment Development Authority. For the purposes of this act, "low income families" means families whose income does not exceed 50% of the median income of the area, with adjustments for smaller and larger families. "Moderate income families" means families whose income does not exceed 80% and is not less than 50% of the median income for the area, with adjustments for smaller and larger families. "Median range income families" means families whose income does not exceed 120% and is not less than 80% of the median income for the area, with adjustments for smaller and larger families. "Middle income families" means families whose income does not exceed 150% and not less than 120% of the median income for the area, with adjustments for smaller and larger families. "Median income" means an income defined as median within the Standard Metropolitan Statistical Area for Atlantic City by the United States Department of Housing and Urban Development.

In order to achieve a balanced community, the authority shall ensure that the development of housing for families of low and moderate income shall proceed at the same time as housing for families of median range and middle income, until such time as there is no longer a need for such facilities in the city of Atlantic City, as determined by the Casino Reinvestment Development Authority.

(4) Notwithstanding any other law or section to the contrary, particularly this subsection regarding the waiver of the required percentages for housing in the city of Atlantic City, subsection i. of section 14, and sections 26, 27, 28, 29, and 31 of this 1984 amendatory and supplementary act, nothing shall be implemented or waived by the Casino Reinvestment Development Authority which would reduce, impair, or prevent the fulfillment of the priorities established and contained in this subsection of this 1984 amendatory and supplementary act.

g. If a person is a licensee with regard to more than one approved hotel pursuant to section 82 of P.L.1977, c.110 (C.5:12-82), the person shall separately account for the gross revenues, the investment alternative tax obligations, and the investments for a tax credit against the investment alternative tax for each approved hotel, and the tax obligations of the licensee under this section shall be determined separately for each approved hotel. The licensee may apportion investments between its approved hotels; provided that no amount of investment shall be credited more than once. If a licensee receives the prior approval of the Casino Reinvestment Develop-

ment Authority, the licensee may make eligible investments in excess of the investments necessary to receive a tax credit against the investment alternative tax for a given calendar year, and the licensee may carry forward this excess investment and have it credited to its next investment alternative tax obligation. If the Casino Reinvestment Development Authority approves of such excess investment and approves the carry forward of this excess investment, and a licensee elects to purchase bonds of the Casino Reinvestment Development Authority or makes direct investments in approved eligible projects in excess of the investments necessary to receive a tax credit against the investment alternative tax for its current obligation, the licensee shall be entitled to a reduction of the amount of investments necessary in future years, which amount shall be determined annually by the Casino Reinvestment Development Authority, taking into account a current market discount rate from the date of the purchase or investment to the date the purchase or investment would have been required to be made.

h. Each casino licensee shall prepare and file, in a form prescribed by the Casino Reinvestment Development Authority, an annual return reporting that financial information as shall be deemed necessary by the Casino Reinvestment Development Authority to carry out the provisions of this act. This return shall be filed with the Casino Reinvestment Development Authority and the Casino Control Commission on or before April 30 following the calendar year on which the return is based. The Casino Control Commission shall verify to the Casino Reinvestment Development Authority the information contained in the report, to the fullest extent possible. Nothing in this subsection shall be deemed to affect the due dates for making any investment or paying any tax under this section.

i. Any purchase by a licensee of bonds issued by or offered through the Casino Reinvestment Development Authority pursuant to sections 14 and 15 of this act and subsection b. of this section and all approved eligible investments made by a licensee pursuant to section 25 of this act and subsection b. of this section are to be considered investments and not taxes owed or grants to the State or any political subdivision thereof. As such, a licensee shall have the possibility of the return of principal and a return on the capital invested as with other investments. Investors in the bonds issued by or offered through the Casino Reinvestment Development Authority shall be provided with an opinion from a recognized financial rating agency or a financial advisory firm with national standing that each loan of bond proceeds by the Casino Reinvestment Development Authority has the minimum characteristics of an investment, in that a degree of assurance exists that interest and principal payments can be made and other terms of the proposed investment be maintained over the period of the investment, and that the loan of the bond proceeds would qualify for a bond rating of

"C" or better. If an opinion cannot be obtained from a recognized financial rating agency or a financial advisory firm with national standing, an opinion shall be obtained from an expert financial analyst with national standing, selected and hired by the Casino Reinvestment Development Authority. In order to achieve a balanced portfolio, assure the viability of the authority and the projects, facilities and programs undertaken pursuant to this 1984 amendatory and supplementary act, no more than 25% of the total investments made by or through the Casino Reinvestment Development Authority with the proceeds of bonds generated in each year shall be investments which would qualify for a bond rating of "C," unless all holders of obligations in each year agree to waive the 25% limit for that year. Nothing herein shall be interpreted as limiting the Casino Reinvestment Development Authority from taking any steps it deems appropriate to protect the characteristics of its investment in projects or any other investments from not being real investments with a prospect for the return of principal and a return on the capital invested. Anything contained in this section shall not be considered a guarantee by the State or any political subdivision thereof of any return of principal or interest, but any purchase by a licensee of bonds or approved eligible investments made by a licensee pursuant to this act shall be at the risk of the licensee. A licensee or the licensees purchasing an issue of bonds issued by the Casino Reinvestment Development Authority in any given year may arrange, at their option, for those bonds or the investments, made by or through the Casino Reinvestment Development Authority with the proceeds of those bonds, to be insured. The cost of any such insurance purchased by a licensee or licensees shall be paid by the licensee or licensees desiring such insurance.

j. The Casino Reinvestment Development Authority shall promulgate rules and regulations deemed necessary to carry out the purposes of this section.

k. Except as provided in section 13 of P.L.2001, c.221 (C.5:12-173.21), the obligation of a licensee to pay an investment alternative tax pursuant to subsection a. of this section shall end for each licensed facility operated by the licensee 30 years after any investment alternative tax obligation is first incurred in connection with each licensed facility operated by the licensee, unless extended in connection with a deferral granted by the Casino Reinvestment Development Authority pursuant to subsection c. of this section.

15. Section 13 of P.L.1984, c.218 (C.5:12-161) is amended to read as follows:

C.5:12-161 Powers of authority.

13. The Casino Reinvestment Development Authority shall have the following powers:

- a. To adopt and have a common seal and to alter the same at pleasure;
- b. To sue or be sued;
- c. To acquire, hold, use and dispose of any eligible project in which it is making an investment;
- d. To acquire, rent, hold, use, and dispose of other personal property for the purposes of the Casino Reinvestment Development Authority;
- e. To acquire by purchase, gift, or otherwise, or lease as lessee, real property or easements or interests therein necessary or useful and convenient for the purposes of the Casino Reinvestment Development Authority which real property, easements or interests may be subject to mortgages, deeds of trust, or other liens or otherwise, and to hold and to use the same, and to dispose of the property so acquired no longer necessary for the purposes of the Casino Reinvestment Development Authority;
- f. To make and enforce bylaws or rules and regulations for the management and regulation of its business and affairs and for the use, maintenance, and operation of any facility, and to amend the same;
- g. To enter into any agreements or contracts, execute any instruments, and do and perform any acts or things necessary, convenient, or desirable for the purposes of the Casino Reinvestment Development Authority, including the entering into of agreements or contracts with any governmental unit to provide for the payment of principal of and interest on any obligation issued by that governmental unit, the maintenance of necessary reserves in connection with these obligations or the payments under any lease entered into in connection with any eligible project;
- h. To determine eligibility for investments in eligible projects in order to accomplish the purposes of the Casino Reinvestment Development Authority;
- i. To collect and invest any proceeds received under subsection b. of section 3 and section 14 of this act;
- j. To invest in obligations of local governmental units issued to finance eligible projects, provided that the investment shall only be effected through direct negotiation by the Casino Reinvestment Development Authority with the local governmental unit;
- k. To make agreements of any kind with any governmental unit or person for the use or operation of all or any part of any eligible project for consideration and for periods of time and upon other terms and conditions as the Casino Reinvestment Development Authority may fix and agree upon, which agreements may include a partnership, limited partnership,

joint venture or association in which the Casino Reinvestment Development Authority is a general or limited partner or participant;

l. To require and collect fees and charges as the Casino Reinvestment Development Authority shall determine to be reasonable in connection with the exercise of any power given to the Casino Reinvestment Development Authority under the act;

m. To the extent permitted under a contract of the Casino Reinvestment Development Authority with purchasers of its bonds entered into pursuant to section 3 of this 1984 amendatory and supplementary act, to invest and reinvest any of its moneys not required for immediate use, including moneys received for the purchase of its bonds prior to the bonds being issued as it shall deem prudent. A pro rata share of $66 \frac{2}{3}$ % of all interest earned by the Casino Reinvestment Development Authority on any such investments shall be paid to the licensees who entered into a contract with the Casino Reinvestment Development Authority for the purchase of its bonds and who contributed to the moneys which were received by the Casino Reinvestment Development Authority and were invested pursuant to this subsection. All functions, powers and duties relating to the investment or reinvestment of these funds, including the purchase, sale or exchange of any investments or securities, may, upon the request of the Casino Reinvestment Development Authority, be exercised and performed by the Director of the Division of Investment, in accordance with written directions of the Casino Reinvestment Development Authority signed by an authorized officer, without regard to any other law relating to investments by the Director of the Division of Investment;

n. To the extent permitted under the contract of the Casino Reinvestment Development Authority with the holders of its bonds, to invest and reinvest any of its moneys not required for immediate use, including proceeds from the sale of any obligations, securities or other investments as it shall deem prudent. All functions, powers and duties relating to the investment or reinvestment of these funds, including the purchase, sale or exchange of any investments or securities, may upon the request of the Casino Reinvestment Development Authority be exercised and performed by the Director of the Division of Investment, in accordance with written directions of the Casino Reinvestment Development Authority signed by an authorized officer, without regard to any other law relating to investments by the Director of the Division of Investment;

o. To enter into all agreements or contracts with any governmental unit or person, execute any instruments, and do and perform any acts or things necessary, convenient or desirable for the purposes of the Casino Reinvestment Development Authority to carry out any power expressly given in this act;

p. To exercise the right of eminent domain in the city of Atlantic City;
q. To meet and hold hearings at places as it shall designate; and
r. To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly, through lessees, licensees or agents, projects consisting of facilities, at a site or sites within the State of New Jersey, that are related to, incidental to, necessary for or complementary to, the accomplishment of any of the purposes of the authority or of any project of the authority authorized in accordance with P.L.1984, c.218 (C.5:12-144.1 et seq.), as amended.

16. Section 3 of P.L.1991, c.376 (C.40:48-8.47) is amended to read as follows:

C.40:48-8.47 Proceeds from promotional fees.

3. Except as provided by P.L.2001, c.221 (C.5:12-173.9 et al.), proceeds from the fees collected in any eligible municipality pursuant to this act shall be paid into a special fund which shall be established and held by the convention center operating authority which is empowered to operate the convention center facilities in the eligible municipality. Amounts in the special fund shall be expended by the convention center operating authority solely for the purpose of promoting tourism, conventions, resorts and casino gaming, if any, in the eligible municipality. Pending this application, monies in the fund shall be invested in accordance with law applicable to the convention center operating authority and the income therefrom shall be credited to the fund.

17. This act shall take effect on the 60th day next following enactment.

Approved August 24, 2001.

CHAPTER 222

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

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

1. a. (1) There is appropriated to the Department of Environmental Protection from the Clean Water Fund - State Revolving Fund Accounts (hereinafter referred to as the "Clean Water State Revolving Fund Accounts") an amount equal to the Federal fiscal year 2001 capitalization grant made available to the State for clean water projects pursuant to the "Water Quality Act of 1987" (33 U.S.C. §1251 et seq.), and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Clean Water Act").

(2) There is appropriated to the Department of Environmental Protection from the Drinking Water State Revolving Fund an amount equal to the Federal fiscal year 2001 capitalization grant made available to the State for drinking water projects pursuant to the "Safe Drinking Water Act Amendments of 1996" Pub.L.104-182, and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Safe Drinking Water Act").

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

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

(4) There is appropriated to the Department of Environmental Protection the sum of \$5,000,000 from the "1992 Wastewater Treatment Fund" established pursuant to section 27 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," (P.L.1992, c.88).

(5) There is appropriated to the Department of Environmental Protection the sum of \$40,000,000 from the "Water Supply Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," (P.L.1981, c.261), as amended by P.L.1983, c.355 and amended and supplemented by P.L.1997, c.223.

Any such amounts shall be for the purpose of making zero interest loans, to the extent sufficient funds are available, to or on behalf of local government units or public water utilities (hereinafter referred to as "project sponsors") to finance a portion of the cost of construction of clean water projects and drinking water projects listed in sections 2 and 3 of this act, and for the purpose of implementing and administering the provisions of this act, to the extent permitted by the "Water Quality Act of 1987" (33

U.S.C. §1251 et seq.), the "Wastewater Treatment Bond Act of 1985" (P.L.1985, c.329), the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992" (P.L.1992, c.88), the "Water Supply Bond Act of 1981," (P.L.1981, c.261), the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989" (P.L.1989, c.181), the Federal Safe Drinking Water Act, and any amendatory and supplementary acts thereto, and State law.

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

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

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

Project Number	Project Sponsor	Estimated Allowable Loan Amount
809-03/4-1	Atlantic County UA	\$2,350,000
809-07-1	Atlantic County UA	\$ 500,000
287-01-1	Oaklyn Borough	\$ 150,000
839-02-1	Franklin Township SA	\$1,600,000
118-02-1	Keansburg Borough	\$ 500,000
	TOTAL	\$5,100,000

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to section 6 of this act and the loan amounts certified by the commissioner in State fiscal years 1996, 1998, 2000 and 2001 and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to section 4 of P.L.1985, c.329. The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amount indicated and in the priority stated, to the extent sufficient funds are available, except as any project fails to meet the requirements of section 4 of this act.

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

b. (1) The department is authorized to expend funds for the purpose of making a supplemental loan to or on behalf of the project sponsor listed below for the following environmental infrastructure project:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0103001-001/5-1	Brigantine City	\$100,000
	TOTAL	\$100,000

(2) The loan authorized in this subsection shall be made for the difference between the allowable loan amount required by this project based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amount certified by the commissioner in State fiscal year 2000, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to section 5 of P.L.1981, c.261. The loan authorized in this subsection shall be made to or on behalf of the project sponsor listed, up to the individual amount indicated and in the priority stated, to the extent sufficient funds are available, except as the project fails to meet the requirements of section 4 of this act.

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

3. a. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2002 Clean Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
488-03	Hopatcong Borough	\$2,800,000
701-03	West Milford Township MUA	\$850,000
928-02	Jersey City MUA	\$8,150,000
942-03	Elizabeth City	\$4,550,000
750-05	Ocean Township SA	\$4,300,000
362-03	Harrison Township (Gloucester)	\$2,050,000
372-24	Ocean County UA	\$5,600,000
639-03	Ridgewood Village	\$10,150,000
680-06	Middlesex County UA	\$17,700,000
2007-01/2	Burlington County Board of Chosen Freeholders	\$9,750,000
3004-01	Mercer County	\$1,900,000
322-02	Passaic Valley Water Commission	\$5,600,000
526-07	Gloucester County UA	\$2,350,000
3027-01	Edison Township	\$11,900,000
3010-01	Brick Township	\$3,450,000
3017-01	Franklin Township (Somerset)	\$400,000
2003-01	Evesham Township	\$1,750,000
3023-01	Evesham Township	\$4,550,000
3006-01	Bridgewater Township	\$1,000,000

895-06	Winslow Township (Albion Area)	\$1,950,000
3002-01	Roxbury Township	\$450,000
3005-01	West Windsor Township	\$2,200,000
3030-01	Montville Township	\$2,100,000
3034-01	Readington Township	\$800,000
3008-01	Princeton Township	\$1,000,000
3003-01	Hanover Township	\$1,150,000
3028-01	Holmdel Township	\$2,100,000
3012-01	Clinton Township	\$13,450,000
3020-01	Washington Township (Mercer)	\$1,450,000
3033-01	Edgewater Borough	\$300,000
3026-01	Eastampton Township	\$6,000,000
3013-01	Allamuchy Township	\$4,500,000
875-01	Voorhees Township	\$2,950,000
2001-01	Atlantic County UA	\$3,400,000
2008-02	Sussex County MUA	\$3,200,000
641-01	Camden City	\$6,650,000
399-25	Bayonne MUA	\$1,800,000
448-04	Brick Township MUA	\$1,600,000
364-02	Gloucester Township MUA	\$1,200,000
293-01	Union Township	\$150,000
259-03	Kearny MUA	\$750,000
550-04	Cumberland County UA	\$1,100,000
545-04	Glassboro Borough	\$1,900,000
291-02	Collingswood Borough	\$700,000
385-02	Berkeley Heights Township	\$1,000,000
958-03	Gloucester City	\$800,000
163-01	Waterford Township MUA	\$1,000,000
827-01	Brigantine City	\$650,000
967-04	Matawan Borough	\$1,400,000
666-02	Margate City	\$350,000
944-02	Chesterfield Township	\$3,000,000
258-02	Cape May City	\$300,000
375-01	Hainesport Township	\$7,250,000
366-04	Camden City	\$2,450,000
437-11	New Brunswick City	\$2,350,000
649-03	Pemberton Township	\$400,000
870-03	Pennsville Township	\$1,000,000
161-01	Lumberton Township	\$1,800,000
827-02	Brigantine City	\$200,000
	TOTAL	\$185,600,000

b. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2002 Drinking Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0601001-001	Bridgeton City	\$950,000
0705001-001	East Orange City	\$4,800,000
0408001-003	Camden City	\$3,400,000
0613001-001	Seabrook Water Corp.	\$550,000
0435003-004	Waterford Township MUA	\$1,200,000
0604001-002/4	Middlesex Water Company (Bayview Water Company)	\$900,000
0435003-003	Waterford Township MUA	\$950,000
1605002-005	Passaic Valley Water Commission	\$43,500,000
1707001-003	Pennsgrove Water Supply Company	\$350,000
0502001-003	Cape May City	\$250,000
0408001-012	Camden City	\$2,500,000
0822001-002	Woodbury City	\$1,600,000
1345001-002	New Jersey American Water Company - Monmouth	\$11,750,000
0424001-001	Merchantville-Pennsauken Water Commission	\$2,150,000
0704002-006	Essex County UA	\$1,350,000
0435003-002	Waterford Township MUA	\$700,000
1506001-001	Brick Township MUA	\$9,500,000
0116001-001	Margate City	\$200,000
1225001-006/7	Middlesex Water Company	\$2,550,000
1904001-001	Brookwood Musconetcong River POA	\$600,000
1429001-001	Parsippany-Troy Hills Township	\$350,000
0713001-005	Montclair Township	\$800,000
1615017-002	Wonder Lakes Properties, Inc.	\$100,000
1514001-003	New Jersey American Water Company - Lakewood	\$200,000
0508001-001	New Jersey American Water Company - Ocean City	\$100,000
0506010-001	New Jersey American Water Company - Neptune	\$50,000

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2121001-001	New Jersey American Water Company - Washington (Warren)	\$50,000
0119002-002	New Jersey American Water Company - Atlantic	\$250,000
1533001-001	Barnegat Township	\$450,000
2103001-001	New Jersey American Water Company - Belvidere	\$50,000
1011001-001	New Jersey American Water Company - Frenchtown	\$50,000
0510001-001	Stone Harbor Borough	\$450,000
1429001-002	Parsippany-Troy Hills Township	\$600,000
1504001-002	Beachwood Borough	\$300,000
0327001-004	New Jersey American Water Company - Western Division	\$850,000
1208001-001	New Jersey American Water Company - Jamesburg	\$100,000
1345001-001	New Jersey American Water Company - Monmouth	\$850,000
0712001-002	New Jersey American Water Company - Short Hills	\$700,000
1502001-001	New Jersey American Water Company - Ocean County	\$250,000
1605001-001	New Jersey American Water Company - Little Falls	\$100,000
1502001-003	New Jersey American Water Company - Ocean County	\$450,000
0511001-001	New Jersey American Water Company - Strathmere	\$50,000
2004002-001	Watchung Borough	\$300,000
0720001-002	ECUA/Verona	\$950,000
	TOTAL	\$98,150,000

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

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

b. The loan amount shall not exceed 50% of the allowable project cost of the environmental infrastructure facility;

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

d. The loan shall be conditioned upon approval of a loan from the New Jersey Environmental Infrastructure Trust pursuant to P.L.2001, c.224;

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.2001, c.224 or to administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5).

5. The priority lists and authorization for the making of loans pursuant to sections 2 and 3 of this act shall expire on July 1, 2002, and any project sponsor which has not executed and delivered a loan agreement with the department for a loan authorized in this act shall no longer be entitled to that loan.

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

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

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

9. a. Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, prior to repayment to the "1992 Wastewater Treatment Fund" pursuant to the provisions of section 28 of P.L.1992, c.88, prior to repayment to the Drinking Water State Revolving Fund, prior to repayment to the "Stormwater Management and

Combined Sewer Overflow Abatement Fund" pursuant to the provisions of section 15 of P.L.1989, c.181, or prior to repayment to the "Water Supply Fund" pursuant to the provisions of section 15 of P.L.1981, c.261, repayments of loans made pursuant to these acts may be utilized by the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, under terms and conditions established by the commissioner and trust, and approved by the State Treasurer, and consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) and federal tax, environmental or securities law, to the extent necessary to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.2001, c.224, and to secure the administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the project sponsors receiving trust loans.

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

c. To the extent that any loan repayment sums are used to satisfy any trust bond repayment or administrative fee payment deficiencies, the trust shall repay such sums to the department for deposit into the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the Drinking Water State Revolving Fund or the "Stormwater Management and Combined Sewer Overflow Abatement Fund," as appropriate, from amounts received by or on behalf of the trust from project sponsors causing any such deficiency.

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

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

12. There is appropriated to the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) from repayments of loans deposited in any account, including the Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the "Water Supply Fund," the "Stormwater Management and Combined Sewer Overflow Abatement Fund," or the Drinking Water State Revolving Fund, as appropriate, and from any net earnings received from the investment and reinvestment of such deposits, the sum of \$50,000,000 to establish a short-term or temporary revolving financing program pursuant to subsection d. of section 9 of P.L.1985, c.334 (C.58:11B-9).

13. This act shall take effect immediately.

Approved August 24, 2001.

CHAPTER 223

AN ACT concerning environmental infrastructure projects, and amending P.L.1985, c.334 and P.L.1997, c.224.

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

1. Section 3 of P.L.1985, c.334 (C.58:11B-3) is amended to read as follows:

C.58:11B-3 Definitions relative to the New Jersey Environmental Infrastructure Trust.

3. As used in sections 1 through 27 of P.L.1985, c.334 (C.58:11B-1 through 58:11B-27) and sections 23 through 27 of P.L.1997, c.224 (C.58:11B-10.1 et al.):

"Bonds" means bonds issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

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

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

"Commissioner" means the Commissioner of the Department of Environmental Protection;

"Cost" means the cost of all labor, materials, machinery and equipment, lands, property, rights and easements, financing charges, interest on bonds, notes or other obligations, plans and specifications, surveys or estimates of costs and revenues, engineering and legal services, and all other expenses necessary or incident to all or part of an environmental infrastructure project;

"Department" means the Department of Environmental Protection;

"Local government unit" means (1) a State authority, county, municipality, municipal, county or regional sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority, or any other political subdivision of the State authorized to construct, operate and maintain wastewater treatment systems; or (2) a State authority, district water supply commission, county, municipality, municipal, county or regional utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption;

"Notes" means notes issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

"Project" or "environmental infrastructure project" means the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to any (1) wastewater treatment system project, including any stormwater management or combined sewer overflow abatement projects; or (2) water supply project, as authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

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

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections, including nonprofit, noncommunity water systems owned or operated by a nonprofit group or organization;

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

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

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

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

"Wastewater treatment system project" means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to any wastewater treatment system that meets the requirements set forth in sections 20, 21 and 22 of P.L.1985, c.334 (C.58:11B-20, 58:11B-21 and 58:11B-22); or any work relating to any of the stormwater management or combined sewer overflow abatement projects identified in the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner

pursuant to section 28 of P.L.1989, c.181; or any work relating to any other project eligible for financing under the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any amendatory or supplementary acts thereto;

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

"Water supply project" means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to water supply facilities that meets the requirements set forth in sections 24, 25 and 26 of P.L.1997, c.224 (C.58:11B-20.1, C.58:11B-21.1 and C.58:11B-22.1); or any work relating to the purposes set forth in section 4 of P.L.1981, c.261; or any work relating to any other project eligible for funding pursuant to the federal "Safe Drinking Water Act Amendments of 1996" Pub.L.104-182, and any amendatory and supplementary acts thereto.

2. Section 5 of P.L.1985, c.334 (C.58:11B-5) is amended to read as follows:

C.58:11B-5 Powers of trust.

5. Except as otherwise limited by the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), the trust may:

- a. Make and alter bylaws for its organization and internal management and, subject to agreements with holders of its bonds, notes or other obligations, make rules and regulations with respect to its operations, properties and facilities;
- b. Adopt an official seal and alter it;
- c. Sue and be sued;

d. Make and enter into all contracts, leases and agreements necessary or incidental to the performance of its duties and the exercise of its powers under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and subject to any agreement with the holders of the trust's bonds, notes or other obligations, consent to any modification, amendment or revision of any contract, lease or agreement to which the trust is a party;

e. Enter into agreements or other transactions with and accept, subject to the provisions of section 23 of P.L.1985, c.334 (C.58:11B-23), grants, appropriations and the cooperation of the State, or any State agency, in furtherance of the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and do anything necessary in order to avail itself of that aid and cooperation;

f. Receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), subject to the conditions upon which that aid and those contributions may be made, including, but not limited to, gifts or grants from any department or agency of the State, or any State agency, for any purpose consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), subject to the provisions of section 23 of P.L.1985, c.334 (C.58:11B-23);

g. Acquire, own, hold, construct, improve, rehabilitate, renovate, operate, maintain, sell, assign, exchange, lease, mortgage or otherwise dispose of real and personal property, or any interest therein, in the exercise of its powers and the performance of its duties under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

h. Appoint and employ an executive director and any other officers or employees as it may require for the performance of its duties, without regard to the provisions of Title 11A of the New Jersey Statutes;

i. Borrow money and issue bonds, notes and other obligations, and secure the same, and provide for the rights of the holders thereof as provided in the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

j. Subject to any agreement with holders of its bonds, notes or other obligations, invest moneys of the trust not required for immediate use, including proceeds from the sale of any bonds, notes or other obligations, in any obligations, securities and other investments in accordance with the rules and regulations of the State Investment Council or as may otherwise be approved by the Director of the Division of Investment in the Depart-

ment of the Treasury upon a finding that such investments are consistent with the corporate purposes of the trust;

k. Procure insurance to secure the payment of its bonds, notes or other obligations or the payment of any guarantees or loans made by it in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), or against any loss in connection with its property and other assets and operations, in any amounts and from any insurers as it deems desirable;

l. Engage the services of attorneys, accountants, engineers, and financial experts and any other advisors, consultants, experts and agents as may be necessary in its judgment and fix their compensation;

m. (1) Make and contract to make loans to local government units, or to a local government unit on behalf of another local government unit, to finance the cost of wastewater treatment system projects or water supply projects and acquire and contract to acquire notes, bonds or other obligations issued or to be issued by any local government units to evidence the loans, all in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

(2) Make and contract to make loans to public water utilities, or to any other person or local government unit on behalf of a public water utility, to finance the cost of water supply projects in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

(3) Make and contract to make loans to private persons other than local government units, or to any other person or local government unit on behalf of a private person, to finance the cost of stormwater management systems in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

n. Subject to any agreement with holders of its bonds, notes or other obligations, purchase bonds, notes and other obligations of the trust and hold the same for resale or provide for the cancellation thereof, all in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

o. (1) Charge to and collect from local government units, private persons or public water utilities any fees and charges in connection with the trust's loans, guarantees or other services, including, but not limited to, fees and charges sufficient to reimburse the trust for all reasonable costs necessarily incurred by it in connection with its financings and the establishment and maintenance of reserve or other funds, as the trust may determine to be reasonable. The fees and charges shall be in accordance with a uniform schedule published by the trust for the purpose of providing actual cost reimbursement for the services rendered;

(2) Any fees and charges collected by the trust pursuant to this subsection may be deposited and maintained in a fund separate from any other funds held by the trust pursuant to section 10 of P.L.1985, c.334 (C.58:11B-10) or section 23 of P.L.1997, c.224 (C.58:11B-10.1 et al.) and shall be available for any corporate purposes of the trust;

p. Subject to any agreement with holders of its bonds, notes or other obligations, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds, notes and other obligations of the trust or for the purchase upon tender or otherwise of the bonds, notes or other obligations, lines of credit, letters of credit and other security agreements or instruments in any amounts and upon any terms as the trust may determine, and pay any fees and expenses required in connection therewith;

q. Provide to local government units any financial and credit advice as these local government units may request;

r. Make payments to the State from any moneys of the trust available therefor as may be required pursuant to any agreement with the State or act appropriating moneys to the trust; and

s. Take any action necessary or convenient to the exercise of the foregoing powers or reasonably implied therefrom.

3. 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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), 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 of the New Jersey Statutes, 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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) 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, a summary of which shall be published at least once 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 summary 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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) 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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.).

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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) 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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.). 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.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), 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 \$1,350,000,000. 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 savings.

(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 Budget Oversight Committee, 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 or private sale and the reasons therefor.

(2) The Joint Budget Oversight Committee or its successor 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 committee 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 Budget Oversight Committee or its successor 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 committee 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 committee 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, 2025.
- j. (Deleted by amendment, P.L.1996, c.88).

4. Section 9 of P.L.1985, c.334 (C.58:11B-9) is amended to read as follows:

C.58:11B-9 Loans to local government units.

9. a. (1) The trust may make and contract to make loans to local government units, or to a local government unit on behalf of another local government unit, in accordance with and subject to the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) to finance the cost of any wastewater treatment system project or water supply project, which the local government unit may lawfully undertake or acquire and for which the local government unit is authorized by law to borrow money.

(2) The trust may make and contract to make loans to public water utilities, or to any other person or local government unit on behalf of a public water utility, in accordance with and subject to the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) to finance the cost of any water supply project, which the public water utility may lawfully undertake or acquire.

(3) The trust may make and contract to make loans to private persons other than local government units, or to any other person or local government unit on behalf of a private person, in accordance with and subject to the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) to finance the cost of stormwater management systems.

The loans may be made subject to those terms and conditions as the trust shall determine to be consistent with the purposes thereof. Each loan by the trust and the terms and conditions thereof shall be subject to approval by the State Treasurer, and the trust shall make available to the State Treasurer all information, statistical data and reports of independent consultants or experts as the State Treasurer shall deem necessary in order to evaluate the loan. Each loan to a local government unit, public water utility or any other person shall be evidenced by notes, bonds or other obligations thereof issued to the trust. In the case of each local government unit, notes and bonds to be issued to the trust by the local government unit (1) shall be authorized and issued as provided by law for the issuance of notes and bonds by the local government unit, (2) shall be approved by the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs, and (3) notwithstanding the provisions

of N.J.S.40A:2-27, N.J.S.40A:2-28 and N.J.S.40A:2-29 or any other provisions of law to the contrary, may be sold at private sale to the trust at any price, whether or not less than par value, and shall be subject to redemption prior to maturity at any times and at any prices as the trust and local government units may agree. Each loan to a local government unit, public water utility or any other person and the notes, bonds or other obligations thereby issued shall bear interest at a rate or rates per annum as the trust and the local government unit, public water utility or any other person, as the case may be, may agree.

b. The trust is authorized to guarantee or contract to guarantee the payment of all or any portion of the principal and interest on bonds, notes or other obligations issued by a local government unit to finance the cost of any wastewater treatment system project or water supply project, which the local government unit may lawfully undertake or acquire and for which the local government unit is authorized by law to borrow money, and the guarantee shall constitute an obligation of the trust for the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.). Each guarantee by the trust and the terms and conditions thereof shall be subject to approval by the State Treasurer, and the trust shall make available to the State Treasurer all information, statistical data and reports of independent consultants or experts as the State Treasurer shall deem necessary in order to evaluate the guarantee.

c. The trust shall not make or contract to make any loans or guarantees to local government units, public water utilities or any other person, or otherwise incur any additional indebtedness, on or after November 5, 2025.

d. Notwithstanding any provision of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) to the contrary, the trust may receive funds from any source or 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 to finance or refinance short-term or temporary loans to local government units, public water utilities or private persons for any wastewater treatment system projects included on the project priority list for the ensuing fiscal year and eligible for approval pursuant to section 20 of P.L.1985, c.334 (C.58:11B-20) or water supply projects included on the project priority list for the ensuing fiscal year and eligible for approval pursuant to section 24 of P.L.1997, c.224 (C.58:11B-20.1), as applicable, without regard to any other provisions of P.L.1985, c.334 or P.L.1997, c.224, including, without limitation, any administrative or legislative approvals.

Any short-term or temporary loans made by the trust pursuant to this subsection may only be made in advance of the anticipated loans the trust may make and contract to make under the provisions of subsection a. of this

section to be financed or refinanced through the issuance of bonds, notes or other obligations of the trust authorized under section 6 of P.L. 1985, c.334 (C.58:11B-6).

5. Section 20 of P.L.1985, c.334 (C.58:11B-20) is amended to read as follows:

C.58:11B-20 Project priority list.

20. a. The Commissioner of Environmental Protection shall for each fiscal year develop a priority system for wastewater treatment systems and shall establish the ranking criteria and funding policies for the projects therefor. The commissioner shall set forth a project priority list for funding by the trust for each fiscal year and shall include the aggregate amount of funds of the trust to be authorized for these purposes. The project priority list may include any stormwater management or combined sewer overflow abatement project identified in the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner pursuant to section 28 of P.L.1989, c.181.

The project priority list, which shall include for each wastewater treatment system the date each project is scheduled to be certified as ready for funding, shall be in conformance with applicable provisions of the "Federal Water Pollution Control Act Amendments of 1972," Pub.L. 92-500 (33 U.S.C. s.1251 et al.), and any amendatory or supplementary acts thereto, and State law. The project priority list shall include a description of each project and its purpose, impact, cost, and construction schedule, and an explanation of the manner in which priorities were established. The priority system and project priority list for the ensuing fiscal year shall be submitted to the Legislature on or before January 15 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. On or before May 15 of each year, the trust shall submit the project priority list to be introduced in each House in the form of legislative appropriations bills, which shall be referred to the Senate Environment Committee and the General Assembly Solid and Hazardous Waste Committee, or their successors, for their respective consideration.

b. The Senate Environment Committee and the General Assembly Solid and Hazardous Waste Committee shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before July 1 of each year, the Legislature shall approve an appropriations act containing the

project priority list, including any amendatory or supplementary provisions thereto, which act shall include the authorization of an aggregate amount of funds of the trust to be expended for loans and guarantees for the specific projects, including the individual amounts therefor, on the list.

c. The trust shall not expend any money for a loan or guarantee during a fiscal year for any wastewater treatment system project unless the expenditure is authorized pursuant to an appropriations act as provided in the provisions of this section, or as otherwise set forth in an appropriations act.

6. Section 24 of P.L.1997, c.224 (C.58:11B-20.1) is amended to read as follows:

C.58:11B-20.1 Priority system for water supply projects; policies.

24. a. The Commissioner of Environmental Protection shall for each fiscal year develop a priority system for water supply projects and shall establish the ranking criteria and funding policies therefor. The commissioner shall set forth a project priority list for funding by the trust for each fiscal year and shall include the aggregate amount of funds of the trust to be authorized for these purposes. The commissioner may include a water supply project on the project priority list if it meets the eligibility requirements for funding pursuant to the federal "Safe Drinking Water Act Amendments of 1996," Pub.L.104-182. The project priority list shall include a description of each project and an explanation of the manner in which priorities were established. The priority system and project priority list for the ensuing fiscal year shall be submitted to the Legislature on or before January 15 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. On or before May 15 of each year, the trust shall submit the project priority list to be introduced in each House in the form of legislative appropriations bills, which shall be referred to the Senate Environment Committee and the General Assembly Solid and Hazardous Waste Committee, or their successors, for their respective consideration.

b. The Senate Environment Committee and the General Assembly Solid and Hazardous Waste Committee shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before July 1 of each year, the Legislature shall approve an appropriations act containing the project priority list, including any amendatory or supplementary provisions

thereto, which act shall include the authorization of an aggregate amount of funds of the trust to be expended for loans and guarantees for the specific water supply projects, including the individual amounts therefor, on the list.

c. The trust shall not expend any money for a loan or guarantee during a fiscal year for any water supply project unless the expenditure is authorized pursuant to an appropriations act as provided in the provisions of this section, or as otherwise set forth in an appropriations act.

7. Section 21 of P.L.1985, c.334 (C.58:11B-21) is amended to read as follows:

C.58:11B-21 Financial plan.

21. On or before May 15 of each year, the trust shall submit to the Legislature a financial plan designed to implement the financing of the wastewater treatment system projects either on the project priority list approved pursuant to section 20 of P.L.1985, c.334 (C.58:11B-20) or as otherwise approved by the Legislature. The financial plan shall contain an enumeration of the bonds, notes or other obligations of the trust which the trust intends to issue, including the amounts thereof and the terms and conditions thereof, a list of loans to be made to local government units or private persons, including the terms and conditions thereof and the anticipated rate of interest per annum and repayment schedule therefor, and a list of loan guarantees or contracts to guarantee the payment of all or a portion of the principal and interest on bonds, notes or other obligations issued by a local government unit to finance the cost of a wastewater treatment system project, and the terms and conditions thereof.

The financial plan shall also set forth a complete operating and financial statement covering its proposed operations during the forthcoming fiscal year, including amounts of income from all sources, and the uniform schedule of fees and charges established by the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5), and the amounts to be derived therefrom, and shall summarize the status of each wastewater treatment system project for which loans or guarantees have been made by the trust, and shall describe major impediments to the accomplishment of the planned wastewater treatment system projects.

8. Section 25 of P.L.1997, c.224 (C.58:11B-21.1) is amended to read as follows:

C.58:11B-21.1 Submission of financial plan to Legislature.

25. On or before May 15 of each year, the trust shall submit to the Legislature a financial plan designed to implement the financing of the water supply projects either on the project priority list approved pursuant to

section 24 of P.L.1997, c.224 (C.58:11B-20.1) or as otherwise approved by the Legislature. The financial plan shall contain an enumeration of the bonds, notes or other obligations of the trust which the trust intends to issue, including the amounts thereof and the terms and conditions thereof, a list of loans to be made to local government units, public water utilities, or to any other person or local government unit on behalf of a public water utility, including the terms and conditions thereof and the anticipated rate of interest per annum and repayment schedule therefor, and a list of loan guarantees or contracts to guarantee the payment of all or a portion of the principal and interest on bonds, notes or other obligations issued by a local government unit to finance the cost of a water supply project, and the terms and conditions thereof.

The financial plan shall also set forth a complete operating and financial statement covering its proposed operations during the forthcoming fiscal year, including amounts of income from all sources, and the uniform schedule of fees and charges established by the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5), and the amounts to be derived therefrom, and shall summarize the status of each water supply project for which loans or guarantees have been made by the trust, and shall describe major impediments to the accomplishment of the planned water supply projects.

9. Section 27 of P.L.1997, c.224 (C.58:11B-22.2) is amended to read as follows:

C.58:11B-22.2 Submission of consolidated financial plan.

27. As an alternative to the individual annual submissions required by the provisions of sections 21 and 22 of P.L.1985, c.334 (C.58:11B-21 and 58:11B-22) and sections 25 and 26 of P.L.1997, c.224 (C.58:11B-21.1 and C.58:11B-22.1), the trust may develop and submit to the Legislature a consolidated financial plan designed to implement the financing of the wastewater treatment system projects on the project priority list approved pursuant to section 20 of P.L.1985, c.334 (C.58:11B-20), the water supply projects on the project priority list approved pursuant to section 24 of P.L.1997, c.224 (C.58:11B-20.1) and any other projects approved by the Legislature.

10. This act shall take effect immediately.

Approved August 24, 2001.

CHAPTER 224

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

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

1. a. The New Jersey Environmental Infrastructure Trust, established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, is authorized to expend the aggregate sum of up to \$200,000,000, and any unexpended balance of the aggregate expenditures authorized pursuant to section 1 of P.L.1998, c.85, section 1 of P.L.1999, c.173 and section 1 of P.L.2000, c.93 for the purpose of making loans, to the extent sufficient funds are available, to or on behalf of local government units or public water utilities (hereinafter referred to as "project sponsors") to finance a portion of the cost of construction of environmental infrastructure projects listed in sections 2 and 4 of this act.

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

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

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

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

c. For the purposes of this act:

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

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

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

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

d. The trust is authorized to increase the loan amount in the future to compensate for a refunding of the issue, provided adequate savings are achieved, for the loans issued pursuant to P.L.1989, c.190, P.L.1990, c.97, P.L.1991, c.324, P.L.1992, c.37, P.L.1993, c.192, P.L.1994, c.105, P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93 and P.L.2001, c.224.

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

Project Number	Project Sponsor	Estimated Allowable Loan Amount
809-03/4-1	Atlantic County UA	\$2,350,000
809-07-1	Atlantic County UA	\$500,000
287-01-1	Oaklyn Borough	\$150,000
839-02-1	Franklin Township SA	\$1,600,000
118-02-1	Keansburg Borough	\$500,000
TOTAL		\$5,100,000

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the chairman of the trust in State fiscal years 1996, 1998, 2000 and 2001 and for increased allowable costs as

defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 6 of this act.

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

b. (1) The trust is authorized to expend funds for the purpose of making a supplemental loan to or on behalf of the project sponsor listed below for the following environmental infrastructure project:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0103001-001/5-1	Brigantine City	\$100,000
TOTAL		\$100,000

(2) The loan authorized in this subsection shall be made for the difference between the allowable loan amount required by this project based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amount certified by the chairman of the trust in State fiscal year 2000, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loan authorized in this subsection shall be made to or on behalf of the project sponsor listed, up to the individual amount indicated and in the priority stated, to the extent sufficient funds are available, except as the project fails to meet the requirements of section 6 of this act.

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

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

subsection a. of section 7 of this act, or if a project fails to meet the requirements of section 6 of this act. The trust is authorized to increase any such amount pursuant to subsections b., c. or d. of section 7 or section 8 of this act.

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

4. a. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2002 Clean Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
488-03	Hopatcong Borough	\$2,800,000
701-03	West Milford Township MUA	\$850,000
928-02	Jersey City MUA	\$8,150,000
942-03	Elizabeth City	\$4,550,000
750-05	Ocean Township SA	\$4,300,000
362-03	Harrison Township (Gloucester)	\$2,050,000
372-24	Ocean County UA	\$5,600,000
639-03	Ridgewood Village	\$10,150,000
680-06	Middlesex County UA	\$17,700,000
2007-01/2	Burlington County Board of Chosen Freeholders	\$9,750,000
3004-01	Mercer County	\$1,900,000
322-02	Passaic Valley Water Commission	\$5,600,000
526-07	Gloucester County UA	\$2,350,000
3027-01	Edison Township	\$11,900,000
3010-01	Brick Township	\$3,450,000
3017-01	Franklin Township (Somerset)	\$400,000
2003-01	Evesham Township	\$1,750,000
3023-01	Evesham Township	\$4,550,000
3006-01	Bridgewater Township	\$1,000,000
895-06	Winslow Township (Albion Area)	\$1,950,000

3002-01	Roxbury Township	\$450,000
3005-01	West Windsor Township	\$2,200,000
3030-01	Montville Township	\$2,100,000
3034-01	Readington Township	\$800,000
3008-01	Princeton Township	\$1,000,000
3003-01	Hanover Township	\$1,150,000
3028-01	Holmdel Township	\$2,100,000
3012-01	Clinton Township	\$13,450,000
3020-01	Washington Township (Mercer)	\$1,450,000
3033-01	Edgewater Borough	\$300,000
3026-01	Eastampton Township	\$6,000,000
3013-01	Allamuchy Township	\$4,500,000
875-01	Voorhees Township	\$2,950,000
2001-01	Atlantic County UA	\$3,400,000
2008-02	Sussex County MUA	\$3,200,000
641-01	Camden City	\$6,650,000
399-25	Bayonne MUA	\$1,800,000
448-04	Brick Township MUA	\$1,600,000
364-02	Gloucester Township MUA	\$1,200,000
293-01	Union Township	\$150,000
259-03	Kearny MUA	\$750,000
550-04	Cumberland County UA	\$1,100,000
545-04	Glassboro Borough	\$1,900,000
291-02	Collingswood Borough	\$700,000
385-02	Berkeley Heights Township	\$1,000,000
958-03	Gloucester City	\$800,000
163-01	Waterford Township MUA	\$1,000,000
827-01	Brigantine City	\$650,000
967-04	Matawan Borough	\$1,400,000
666-02	Margate City	\$350,000
944-02	Chesterfield Township	\$3,000,000
258-02	Cape May City	\$300,000
375-01	Hainesport Township	\$7,250,000
366-04	Camden City	\$2,450,000
437-11	New Brunswick City	\$2,350,000
649-03	Pemberton Township	\$400,000
870-03	Pennsville Township	\$1,000,000
161-01	Lumberton Township	\$1,800,000
827-02	Brigantine City	\$200,000
	TOTAL	\$185,600,000

b. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2002 Drinking Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0601001-001	Bridgeton City	\$950,000
0705001-001	East Orange City	\$4,800,000
0408001-003	Camden City	\$3,400,000
0613001-001	Seabrook Water Corp.	\$550,000
0435003-004	Waterford Township MUA	\$1,200,000
0604001-002/4	Middlesex Water Company (Bayview Water Company)	\$900,000
0435003-003	Waterford Township MUA	\$950,000
1605002-005	Passaic Valley Water Commission	\$43,500,000
1707001-003	Pennsgrove Water Supply Company	\$350,000
0502001-003	Cape May City	\$250,000
0408001-012	Camden City	\$2,500,000
0822001-002	Woodbury City	\$1,600,000
1345001-002	New Jersey American Water Company - Monmouth	\$11,750,000
0424001-001	Merchantville-Pennsauken Water Commission	\$2,150,000
0704002-006	Essex County UA	\$1,350,000
0435003-002	Waterford Township MUA	\$700,000
1506001-001	Brick Township MUA	\$9,500,000
0116001-001	Margate City	\$200,000
1225001-006/7	Middlesex Water Company	\$2,550,000
1904001-001	Brookwood Musconetcong River POA	\$600,000
1429001-001	Parsippany-Troy Hills Township	\$350,000
0713001-005	Montclair Township	\$800,000
1615017-002	Wonder Lakes Properties, Inc.	\$100,000
1514001-003	New Jersey American Water Company - Lakewood	\$200,000
0508001-001	New Jersey American Water Company - Ocean City	\$100,000

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0506010-001	New Jersey American Water Company - Neptune	\$50,000
2121001-001	New Jersey American Water Company - Washington (Warren)	\$50,000
0119002-002	New Jersey American Water Company - Atlantic	\$250,000
1533001-001	Barnegat Township	\$450,000
2103001-001	New Jersey American Water Company - Belvidere	\$50,000
1011001-001	New Jersey American Water Company - Frenchtown	\$50,000
0510001-001	Stone Harbor Borough	\$450,000
1429001-002	Parsippany-Troy Hills Township	\$600,000
1504001-002	Beachwood Borough	\$300,000
0327001-004	New Jersey American Water Company - Western Division	\$850,000
1208001-001	New Jersey American Water Company - Jamesburg	\$100,000
1345001-001	New Jersey American Water Company - Monmouth	\$850,000
0712001-002	New Jersey American Water Company - Short Hills	\$700,000
1502001-001	New Jersey American Water Company - Ocean County	\$250,000
1605001-001	New Jersey American Water Company - Little Falls	\$100,000
1502001-003	New Jersey American Water Company - Ocean County	\$450,000
0511001-001	New Jersey American Water Company - Strathmere	\$50,000
2004002-001	Watchung Borough	\$300,000
0720001-002	ECUA/Verona	\$950,000
	TOTAL	\$98,150,000

5. In accordance with and subject to the provisions of sections 5, 6 and 23 of P.L.1985, c.334 (C.58:11B-5, 58:11B-6, and 58:11B-23) and as set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21), or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1), any proceeds from bonds issued by the trust to make loans for priority environmental infrastructure projects listed in sections 2 and 4 of this act which are not expended for that purpose may

be applied for the payment of all or any part of the principal of and interest and premium on the trust bonds whether due at stated maturity, the interest payment dates or earlier upon redemption. A portion of the proceeds from bonds issued by the trust to make loans for priority environmental infrastructure projects pursuant to this act may be applied for the payment of capitalized interest and for the payment of any issuance expenses; for the payment of reserve capacity expenses; for the payment of debt service reserve fund expenses; and for the payment of increased costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

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

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

b. The loan shall be conditioned upon approval of a zero interest loan from the Department of Environmental Protection from the "Water Supply Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," (P.L.1981, c.261), as amended by P.L.1983, c.355 and amended and supplemented by P.L.1997, c.223, the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985" (P.L.1985, c.329), the "1992 Wastewater Treatment Fund" established pursuant to section 27 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992" (P.L.1992, c.88), or the Drinking Water State Revolving Fund established pursuant to section 1 of P.L.1998, c.84;

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

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

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

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

The priority lists and authorization for the making of loans pursuant to this act shall expire on July 1, 2002, and any project sponsor which has not executed and delivered a loan agreement with the trust for a loan authorized in this act shall no longer be entitled to that loan.

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

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

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

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

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

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

10. This act shall take effect immediately.

Approved August 24, 2001.

CHAPTER 225

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

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

C.17B:27A-25.1 Findings, declarations relative to small employer health benefits purchasing alliances.

1. The Legislature finds and declares that:
 - a. Small employers, that is, employers that employ between two and 50 employees, have traditionally been at an economic disadvantage with respect to the purchase and provision of health benefits for their employees because certain administrative and premium rate savings that are available to larger employers are not available to them by virtue of their size;
 - b. Providing for the establishment of purchasing alliances comprised of groups of small employers would enable small employers to take advantage of the economies of scale in the delivery of health benefits currently available to large employer groups; and
 - c. Working within the framework of the Small Employer Health Benefits Program established by P.L.1992, c.162 (C.17B:27A-17 et seq.), small employer purchasing alliances, with the voluntary participation of insurance carriers, would have access to the standard health benefits plans developed under that law at a reduced premium, along with the protections afforded under that law, including: guaranteed access to health benefits coverage for their employees; guaranteed renewability of health plans regardless of the health status of employees or their dependents; and prohibitions against the use of certain rating factors such as health status, prior claims history or occupation.

C.17B:27A-25.2 Definitions relative to small employer benefits purchasing alliances.

2. As used in this act:
 - "Board" means a small employer purchasing alliance board of directors provided for in section 4 of this act.
 - "Carrier" means a small employer carrier as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).
 - "Commissioner" means the Commissioner of Banking and Insurance.
 - "Dependent" means the same as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).
 - "Eligible employee" means the same as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).
 - "Eligible group of small employers" means a group of small employers which: (1) are engaged in the same or similar type of trade or business; (2) are members of a common trade association, professional association, or other association; or (3) are located in a common geographic area.
 - "Health benefits plan" means a small employer health benefits plan approved by the commissioner pursuant to section 17 of P.L.1992, c.162 (C.17B:27A-33).
 - "Health status-related factor" means the same as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).

"Member" means a small employer who is a member of a purchasing alliance as provided for in section 3 of this act.

"Small Employer Purchasing Alliance," "purchasing alliance" or "alliance" means a small employer purchasing alliance as established pursuant to section 3 of this act.

"Small employer" means the same as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).

C.17B:27A-25.3 Small Employer Purchasing Alliance, formation.

3. Any eligible group of small employers may join together, by means of a joint contract under the procedures established by this act, to form a "Small Employer Purchasing Alliance" for the purpose of negotiating a reduced premium for its members purchasing a small employer health benefits plan or plans for their eligible employees and the employees' dependents. The joint contract shall be executed by all members of the purchasing alliance.

C.17B:27A-25.4 Board of directors.

4. The purchasing alliance, which may be a corporation, shall be governed by a board of directors, elected by the members of the purchasing alliance. No person may serve as an officer or director of an alliance who has a prior record of administrative, civil or criminal violations within the financial services industry. The directors shall serve for terms of three years, and shall serve until their successors are elected and qualified. The directors shall serve without compensation, except for reimbursement for actual expenses.

C.17B:27A-25.5 Bylaws, contents.

5. The board shall adopt by-laws for the operation of the purchasing alliance, which shall be effective upon ratification by a two-thirds majority of the members. The by-laws shall include, but not be limited to:

a. The establishment of procedures for the organization and administration of the alliance.

b. Procedures for the qualifications and admission of the members of the alliance. The bases for denial of membership shall include, but not be limited to:

(1) Performance of an act or practice that constitutes fraud or intentional misrepresentation of material fact;

(2) Previous denial of membership in the alliance; or

(3) Previous expulsion from the alliance.

c. Procedures for the withdrawal of members from the alliance.

d. Procedures for the expulsion of members from the alliance. The bases for expulsion shall include, but not be limited to:

- (1) Failure to pay membership or other fees required by the purchasing alliance;
 - (2) Failure to pay premiums in accordance with the terms of the health benefits plan or the terms of the joint contract; or
 - (3) Performance of an act or practice that constitutes fraud or intentional misrepresentation of material fact.
- e. Procedures for the termination of the alliance.

C.17B:27A-25.6 Further authority of alliance.

6. In addition to the powers authorized under this act, a purchasing alliance shall have the authority to:
 - a. Set reasonable fees for membership in the alliance that will finance reasonable and necessary costs incurred in administering the purchasing alliance;
 - b. Negotiate premium rates with carriers on behalf of the members of the alliance; and
 - c. Contract with third parties for any services necessary to carry out the powers and duties authorized or required pursuant to this act.

C.17B:27A-25.7 Restrictions on alliances.

7. A purchasing alliance established pursuant to the provisions of this act shall not:
 - a. Purchase health care services, assume risk for the cost or provision of health care services or otherwise contract with health care providers for the provision of health care services to eligible employees or their dependents;
 - b. Exclude a small employer, eligible employee or dependent from membership in the purchasing alliance who agrees to pay fees for membership and the premium for health benefits coverage and who abides by the by-laws and rules of the purchasing alliance;
 - c. Engage in any act or practice that results in the selection of member small employers or eligible employees based on any health status-related factor; or
 - d. Engage in any trade practice or activity prohibited pursuant to chapter 30 of Title 17B of the New Jersey Statutes.

C.17B:27A-25.8 Certificate from alliance to commissioner.

8. a. Within 30 days after its organization, the purchasing alliance board shall file with the commissioner a certificate which shall list the members of the alliance, the names of the board of directors and the chairman, treasurer, and secretary of the purchasing alliance, and the address at which communications for the purchasing alliance are to be received, a copy of the certificate of incorporation of the purchasing

alliance, if any, and a copy of the joint contract executed by all of the members. Any change in the information required by the provisions of this section shall be filed with the commissioner within 30 days of the change.

b. If the commissioner determines that the premium reduction, permitted pursuant to subsection k. of section 9 of P.L.1992, c.162 (C.17B:27A-25) and filed by a carrier in the informational filing required pursuant to subsection f. of that section, results in rates that are excessive, inadequate or unfairly discriminatory, the commissioner may disapprove or deny the premium reduction. If, after notice and a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a carrier or purchasing alliance is found by the commissioner to be in violation of any provision of this act, the commissioner may disapprove or deny the premium reduction permitted pursuant to subsection k. of section 9 of P.L.1992, c.162 (C.17B:27A-25).

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

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

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

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

(3) For all policies or contracts providing health benefits plans for small employers issued pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19), and including policies or contracts offered by a carrier to a small employer who is a member of a Small Employer Purchasing Alliance pursuant to the provisions of P.L.2001, c.225 (C.17B:27A-25.1 et al.) the premium rate charged by a carrier to the highest rated small group purchasing a small employer health benefits plan issued pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19) shall not be greater than 200% of the premium rate charged for the lowest rated small group purchasing that same health benefits plan; provided, however, that the only factors upon which the rate differential may be based are age, gender and geography, and provided further, that such factors are applied in a manner consistent with regulations adopted by the board.

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

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

(5) Any policy or contract issued after January 1, 1994 to a small employer who was not previously covered by a health benefits plan issued by the issuing small employer carrier, shall be subject to the same premium

rate restrictions as provided in paragraphs (1), (2) and (3) of this subsection, which rate restrictions shall be effective on the date the policy or contract is issued.

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

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

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

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

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

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

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

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

f. No insurance contract or policy subject to this act, including a contract or policy entered into with a small employer who is a member of a Small Employer Purchasing Alliance pursuant to the provisions of P.L.2001, c.225 (C.17B:27A-25.1 et al.), may be entered into unless and until the carrier has made an informational filing with the commissioner of a schedule of premiums, not to exceed 12 months in duration, to be paid pursuant to such contract or policy, of the carrier's rating plan and classification system in connection with such contract or policy, and of the actuarial assumptions and methods used by the carrier in establishing premium rates for such contract or policy.

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

provided in paragraph (2) of this subsection. Until December 31, 1996, the informational filing shall also include the carrier's rating plan and classification system in connection with such increase or decrease.

(2) Each calendar year, a carrier shall return, in the form of aggregate benefits for all of the five standard policy forms offered by the carrier pursuant to subsection a. of section 3 of P.L.1992, c.162 (C.17B:27A-19), at least 75% of the aggregate premiums collected for all of the standard policy forms, other than alliance policy forms, at least 75% of the aggregate premiums collected for all of the non-standard policy forms and at least 75% of the aggregate premiums collected for all of the alliance policy forms during that calendar year. Carriers shall annually report, no later than August 1st of each year, the loss ratio calculated pursuant to this section for all of the standard, other than alliance policy forms, non-standard policy forms and alliance policy forms for the previous calendar year. In each case where the loss ratio fails to substantially comply with the 75% loss ratio requirement, the carrier shall issue a dividend or credit against future premiums for all policyholders with the standard, other than alliance policy forms, nonstandard policy forms or alliance policy forms, as applicable, in an amount sufficient to assure that the aggregate benefits paid in the previous calendar year plus the amount of the dividends and credits shall equal 75% of the aggregate premiums collected for the respective policy forms in the previous calendar year. All dividends and credits must be distributed by December 31 of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by this paragraph shall include a carrier's calculation of the dividends and credits applicable to standard, other than alliance policy forms, non-standard policy forms and alliance policy forms, as well as an explanation of the carrier's plan to issue dividends or credits. The instructions and format for calculating and reporting loss ratios and issuing dividends or credits shall be specified by the commissioner by regulation. Such regulations shall include provisions for the distribution of a dividend or credit in the event of cancellation or termination by a policyholder. For purposes of this paragraph, "alliance policy forms" means policies purchased by small employers who are members of Small Employer Purchasing Alliances.

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

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

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

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

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

C.17B:27A-25.9 Rules, regulations.

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

11. This act shall take effect 180 days after enactment.

Approved August 24, 2001.

CHAPTER 226

AN ACT concerning smoking and amending P.L.1981, c.320.

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

1. Section 3 of P.L.1981, c.320 (C.26:3D-17) is amended to read as follows:

C.26:3D-17 Smoking prohibited in educational institutions.

3. a. The appropriate governing body, board or individual responsible for or who has control of the administration of a school, college, university, or professional training school, either public or private, except the board of education of a school district, shall make and enforce suitable regulations controlling the smoking of tobacco on their premises, except in those areas within the premises wherein smoking is prohibited by municipal ordinance under authority of R.S.40:48-1 and 40:48-2 or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire. The governing body, board or individual may, but need not, designate certain areas within the premises as areas in which smoking is permitted. Smoking in classrooms, lecture halls and auditoriums shall be

prohibited except as part of a classroom instruction or a theatrical production.

b. The board of education of each school district shall make and enforce regulations to prohibit the smoking of tobacco anywhere in its buildings or on school grounds, except as part of a classroom instruction or a theatrical production.

2. Section 6 of P.L.1981, c.320 (C.26:3D-20) is amended to read as follows:

C.26:3D-20 Violations, fines, penalties.

6. a. The person responsible for administration of the school, college, university, or professional training school or any other person having control of such premises or any agent thereof or a police officer or other public servant engaged in executing or enforcing this act may order any person smoking in violation of this act to comply with the provisions of this act. Thereupon any such person who smokes on such premises in violation of this act is subject to a fine not to exceed \$100.

b. The State Department of Health and Senior Services or the local board of health or such board, body or officers exercising the functions of the local board of health according to law, upon written complaint and having reason to suspect that any school, college, university or professional training school is or may be in violation of the provisions of this act shall, by written notification, advise the person responsible for the administration of the school, college, university or professional training school or other person having control of the premises accordingly and order appropriate action to be taken. Thereupon, any person receiving such notice who knowingly fails or refuses to comply with the order is subject to a fine not to exceed \$25 for the first offense and not to exceed \$100 for the second offense and not to exceed \$200 for each offense thereafter. In addition to the penalty provided herein, the court may order immediate compliance with the provisions of this act. Notwithstanding the provisions of this subsection, no person shall be liable for a fine if the person has taken reasonable steps to enforce the prohibition on smoking in school buildings or on school grounds.

c. Any penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health and Senior Services of the State of New Jersey or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health and Senior Services, the penalty recovered shall be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the

penalty recovered shall be paid by the local board into the treasury of the municipality where the violation occurred.

d. Every municipal court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of any provision of this act, if the violation has occurred within the territorial jurisdiction of the court. The proceedings shall be summary and in accordance with "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a summons or warrant and shall issue only at the suit of the Commissioner of Health and Senior Services of the State of New Jersey, or the local board of health, as the case may be, as plaintiff.

3. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 227

AN ACT concerning health insurance benefits for Pap smears, amending P.L.1995, c.415 and supplementing P.L.1961, c.49 (C.52:14-17.25 et seq.).

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

1. Section 1 of P.L.1995, c.415 (C.17:48E-35.12) is amended to read as follows:

C.17:48E-35.12 Health service corporation contract, Pap smear benefits.

1. No health service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in conducting a Pap smear. The benefits shall be provided to the same extent as for any other medical condition under the contract.

As used in this section, and notwithstanding the provisions of this section to the contrary, "Pap smear" means an initial Pap smear and any confirmatory test when medically necessary and as ordered by the covered

person's physician and includes all laboratory costs associated with the initial Pap smear and any such confirmatory test.

This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

2. Section 2 of P.L.1995, c.415 (C.17:48-6o) is amended to read as follows:

C.17:48-6o Hospital service corporation contract, Pap smear benefits.

2. No hospital service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in conducting a Pap smear. The benefits shall be provided to the same extent as for any other medical condition under the contract.

As used in this section, and notwithstanding the provisions of this section to the contrary, "Pap smear" means an initial Pap smear and any confirmatory test when medically necessary and as ordered by the covered person's physician and includes all laboratory costs associated with the initial Pap smear and any such confirmatory test.

This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

3. Section 3 of P.L.1995, c.415 (C.17:48A-7m) is amended to read as follows:

C.17:48A-7m Medical service corporation contract, Pap smear benefits.

3. No medical service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in conducting a Pap smear. The benefits shall be provided to the same extent as for any other medical condition under the contract.

As used in this section, and notwithstanding the provisions of this section to the contrary, "Pap smear" means an initial Pap smear and any

confirmatory test when medically necessary and as ordered by the covered person's physician and includes all laboratory costs associated with the initial Pap smear and any such confirmatory test.

This section shall apply to all medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

4. Section 4 of P.L.1995, c.415 (C.17B:27-46.1n) is amended to read as follows:

C.17B:27-46.1n Group health insurance policy, Pap smear benefits.

4. No group health insurance policy providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the policy provides benefits to any named insured or other person covered thereunder for expenses incurred in conducting a Pap smear. The benefits shall be provided to the same extent as for any other medical condition under the policy.

As used in this section, and notwithstanding the provisions of this section to the contrary, "Pap smear" means an initial Pap smear and any confirmatory test when medically necessary and as ordered by the covered person's physician and includes all laboratory costs associated with the initial Pap smear and any such confirmatory test.

This section shall apply to all group health insurance policies in which the health insurer has reserved the right to change the premium.

5. Section 5 of P.L.1995, c.415 (C.26:2J-4.12) is amended to read as follows:

C.26:2J-4.12 HMO contracts, Pap smear benefits.

5. A certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued by the Commissioner of Health and Senior Services on or after the effective date of this act unless the health maintenance organization offers health care services to any enrollee or other person covered thereunder which include a Pap smear. The health care services shall be provided to the same extent as for any other medical condition under the contract.

As used in this section, and notwithstanding the provisions of this section to the contrary, "Pap smear" means an initial Pap smear and any confirmatory test when medically necessary and as ordered by the covered person's physician and includes all laboratory costs associated with the initial Pap smear and any such confirmatory test.

The provisions of this section shall apply to all contracts for health care services by health maintenance organizations under which the right to change the schedule of charges for enrollee coverage is reserved.

C.52:14-17.29f Pap smear benefits in State health benefits contracts.

6. The State Health Benefits Commission shall provide benefits to each person covered under the State Health Benefits Program for expenses incurred in conducting a Pap smear. The benefits shall be provided to the same extent as for any other medical condition under the contract.

As used in this section, and notwithstanding the provisions of this section to the contrary, "Pap smear" means an initial Pap smear and any confirmatory test when medically necessary and as ordered by the covered person's physician and includes all laboratory costs associated with the initial Pap smear and any such confirmatory test.

7. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 228

AN ACT concerning 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-11.14 Purchase of credit in PFRS after member is laid off then rehired.

1. Notwithstanding the provisions of section 4 of P.L.1944, c.255 (C.43:16A-4), any member who is separated involuntarily from firefighting service covered by the retirement system, and not by removal for cause or charges of misconduct or delinquency, and who subsequently becomes a fireman in a position covered by the retirement system may, upon filing an application with the board of trustees of the retirement system, purchase credit in the retirement system for all or a portion of the time of the hiatus in creditable service, but not exceeding three years, as provided in this section.

The member may purchase credit for the service by paying into the annuity savings fund the amount determined by applying the factor, supplied by the actuary, applicable to the member's age at the time of the purchase, to the member's creditable salary in the last 12 months of creditable service in the position covered by the retirement system

immediately preceding the involuntary separation from service. The purchase may be made in regular monthly installments or in a lump sum as the member may elect and pursuant to rules and regulations as may be promulgated by the Division of Pensions and Benefits. The member shall bear the entire cost for the additional retirement benefit attributable to the purchased credit. If, upon retirement, the member's payment for purchase of the credit is insufficient to provide for the additional retirement benefit attributable to the service, the difference may be assessed to the member, or a pro rata credit may be granted based on service purchased prior to the date of retirement, at the election of the member.

If the member retires prior to completing the purchase, the member shall receive pro rata credit for service purchased prior to the date of retirement, unless the member makes an additional lump sum payment at that time as shall be necessary to provide full credit.

2. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 229

AN ACT concerning animal cruelty and amending R.S.4:22-17, R.S.4:22-18, R.S.4:22-19, R.S.4:22-26 and R.S.39:4-23.

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

1. R.S.4:22-17 is amended to read as follows:

Cruelty; disorderly persons offense; certain acts, crime of fourth degree.

4:22-17 a. A person who shall:

- (1) Overdrive, overload, drive when overloaded, overwork, deprive of necessary sustenance, abuse, or needlessly kill a living animal or creature;
- (2) Cause or procure any such acts to be done; or
- (3) Inflict unnecessary cruelty upon a living animal or creature, or unnecessarily fail to provide a living animal or creature of which the person has charge either as an owner or otherwise with proper food, drink, shelter or protection from the weather, or leave it unattended in a vehicle under inhumane conditions adverse to the health or welfare of the living animal or creature--

Shall be guilty of a disorderly persons offense, and notwithstanding the provisions of N.J.S.2C:43-3 to the contrary, for every such offense shall be fined not less than \$250 nor more than \$1,000, or be imprisoned for a term of not more than six months, or both, in the discretion of the court. In addition, the court (1) shall impose a term of community service of up to 30 days, and may direct that the term of community service be served in providing assistance to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, or any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or to a municipality's animal control or animal population control program; (2) may require the violator to pay restitution or otherwise reimburse any costs for food, drink, shelter, or veterinary care or treatment, or other costs, incurred by any agency, entity, or organization investigating the violation, including but not limited to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or a local or State governmental entity; and (3) may impose any other appropriate penalties established for a disorderly persons offense pursuant to Title 2C of the New Jersey Statutes.

b. A person who shall purposely, knowingly, or recklessly:

(1) Torment, torture, maim, hang, unnecessarily or cruelly beat, needlessly mutilate, or cruelly kill a living animal or creature; or

(2) Cause or procure any such acts to be done --

Shall be guilty of a crime of the fourth degree.

In addition to imposing any other appropriate penalties established for a crime of the fourth degree pursuant to Title 2C of the New Jersey Statutes, the court shall impose a term of community service of up to 30 days, and may direct that the term of community service be served in providing assistance to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, or any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or to a municipality's animal control or animal population control program. The court also may require the violator to pay restitution or otherwise reimburse any costs for food, drink, shelter, or veterinary care or treatment, or other costs, incurred by any agency, entity, or organization investigating the violation, including but not limited to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment

and care of animals, or to a municipality's animal control or animal population control program.

c. If a juvenile is adjudicated delinquent for an act which, if committed by an adult, would constitute a disorderly persons offense pursuant to subsection a. of this section or a crime of the fourth degree pursuant to subsection b. of this section, the court also shall order the juvenile to receive mental health counseling by a licensed psychologist or therapist named by the court for a period of time to be prescribed by the licensed psychologist or therapist.

2. R.S.4:22-18 is amended to read as follows:

Carrying animal in cruel, inhumane manner; disorderly persons offense.

4:22-18. A person who shall carry, or cause to be carried, a living animal or creature in or upon a vehicle or otherwise, in a cruel or inhumane manner, shall be guilty of a disorderly persons offense and punished as provided in subsection a. of R.S.4:22-17.

3. R.S.4:22-19 is amended to read as follows:

Failure to care for, destruction of impounded animals; penalties; collection.

4:22-19. A person who shall:

a. Impound or confine, or cause to be impounded or confined, in a pound or other place, a living animal or creature, and shall fail to supply it during such confinement with a sufficient quantity of good and wholesome food and water; or

b. Destroy or cause to be destroyed any such animal by hypoxia induced by decompression or in any other manner, by the administration of a lethal gas other than an inhalant anesthetic, or in any other manner except by a method of euthanasia generally accepted by the veterinary medical profession as being reliable, appropriate to the type of animal upon which it is to be employed, and capable of producing loss of consciousness and death as rapidly and painlessly as possible for such animal shall, in the case of a violation of subsection a., be guilty of a disorderly persons offense and shall be punished as provided in subsection a. of R.S.4:22-17; or, in the case of a violation of subsection b., be subject to a penalty of \$25 for the first offense and \$50 for each subsequent offense. Each animal destroyed in violation of subsection b. shall constitute a separate offense. The penalty shall be collected in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) and all money collected shall be remitted to the State.

This section shall apply to kennels, pet shops, shelters and pounds as defined and licensed pursuant to P.L.1941, c.151 (C.4:19-15.1 et seq.); to

pounds and places of confinement owned and operated by municipalities, counties or regional governmental authorities; and to every contractual warden or impounding service, any provision to the contrary in this title notwithstanding.

4. R.S.4:22-26 is amended to read as follows:

Penalty for acts constituting cruelty in general.

4:22-26. A person who shall:

a. Overdrive, overload, drive when overloaded, overwork, deprive of necessary sustenance, abuse, or needlessly kill, torment, torture, maim, hang, unnecessarily or cruelly beat, needlessly mutilate, or cruelly kill a living animal or creature;

b. Cause or procure any such acts enumerated in subsection a. of this section to be done;

c. Inflict unnecessary cruelty upon a living animal or creature, or unnecessarily fail to provide a living animal or creature of which the person has charge either as an owner or otherwise with proper food, drink, shelter or protection from the weather, or leave it unattended in a vehicle under inhumane conditions adverse to the health or welfare of the living animal or creature;

d. Receive or offer for sale a horse that is suffering from abuse or neglect, or which by reason of disability, disease, abuse or lameness, or any other cause, could not be worked, ridden or otherwise used for show, exhibition or recreational purposes, or kept as a domestic pet without violating the provisions of this article;

e. Keep, use, be connected with or interested in the management of, or receive money or other consideration for the admission of a person to, a place kept or used for the purpose of fighting or baiting a living animal or creature;

f. Be present and witness, pay admission to, encourage, aid or assist in an activity enumerated in subsection e. of this section;

g. Permit or suffer a place owned or controlled by him to be used as provided in subsection e. of this section;

h. Carry, or cause to be carried, a living animal or creature in or upon a vehicle or otherwise, in a cruel or inhumane manner;

i. Use a dog or dogs for the purpose of drawing or helping to draw a vehicle for business purposes;

j. Impound or confine or cause to be impounded or confined in a pound or other place a living animal or creature, and shall fail to supply it during such confinement with a sufficient quantity of good and wholesome food and water;

k. Abandon a maimed, sick, infirm or disabled animal or creature to die in a public place;

l. Willfully sell, or offer to sell, use, expose, or cause or permit to be sold or offered for sale, used or exposed, a horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the health or life of human beings or animals, or who shall, when any such disease is beyond recovery, refuse, upon demand, to deprive the animal of life;

m. Own, operate, manage or conduct a roadside stand or market for the sale of merchandise along a public street or highway; or a shopping mall, or a part of the premises thereof; and keep a living animal or creature confined, or allowed to roam in an area whether or not the area is enclosed, on these premises as an exhibit; except that this subsection shall not be applicable to: a pet shop licensed pursuant to P.L.1941, c.151 (C.4:19-15.1 et seq.); a person who keeps an animal, in a humane manner, for the purpose of the protection of the premises; or a recognized breeders' association, a 4-H club, an educational agricultural program, an equestrian team, a humane society or other similar charitable or nonprofit organization conducting an exhibition, show or performance;

n. Keep or exhibit a wild animal at a roadside stand or market located along a public street or highway of this State; a gasoline station; or a shopping mall, or a part of the premises thereof;

o. Sell, offer for sale, barter or give away or display live baby chicks, ducklings or other fowl or rabbits, turtles or chameleons which have been dyed or artificially colored or otherwise treated so as to impart to them an artificial color;

p. Use any animal, reptile, or fowl for the purpose of soliciting any alms, collections, contributions, subscriptions, donations, or payment of money except in connection with exhibitions, shows or performances conducted in a bona fide manner by recognized breeders' associations, 4-H clubs or other similar bona fide organizations;

q. Sell or offer for sale, barter, or give away living rabbits, turtles, baby chicks, ducklings or other fowl under two months of age, for use as household or domestic pets;

r. Sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl, or rabbits, turtles or chameleons under two months of age for any purpose not prohibited by subsection q. of this section and who shall fail to provide proper facilities for the care of such animals;

s. Artificially mark sheep or cattle, or cause them to be marked, by cropping or cutting off both ears, cropping or cutting either ear more than one inch from the tip end thereof, or half cropping or cutting both ears or either ear more than one inch from the tip end thereof, or who shall have or

keep in his possession sheep or cattle, which he claims to own, marked contrary to this subsection unless they were bought in market or of a stranger;

- t. Abandon a domesticated animal;
- u. For amusement or gain, cause, allow, or permit the fighting or baiting of a living animal or creature;
- v. Own, possess, keep, train, promote, purchase, or knowingly sell a living animal or creature for the purpose of fighting or baiting that animal or creature;
- w. Gamble on the outcome of a fight involving a living animal or creature;
- x. Knowingly sell or barter or offer for sale or barter, at wholesale or retail, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat, unless such fur or hair for sale or barter is from a commercial grooming establishment or a veterinary office or clinic or is for use for scientific research; or
- y. Knowingly sell or barter or offer for sale or barter, at wholesale or retail, for human consumption, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat --

Shall forfeit and pay a sum not to exceed \$250, except in the case of a violation of subsection t. a mandatory sum of \$500, and \$1,000 if the violation occurs on or near a roadway, and in the case of a violation of subsection x. or y. a sum not to exceed \$1,000 for each domestic dog or cat fur or fur or hair product or domestic dog or cat carcass or meat product, to be sued for and recovered, with costs, in a civil action by any person in the name of the New Jersey Society for the Prevention of Cruelty to Animals.

5. R.S.39:4-23 is amended to read as follows:

Mistreatment of horse, violations, disorderly person; certain acts, crime of fourth degree.

39:4-23. No person shall either ill-treat, overdrive, override or unnecessarily or cruelly beat a horse. A person who violates this section shall be guilty of a disorderly persons offense, except that a person who unnecessarily or cruelly beats a horse shall be guilty of a crime of the fourth degree, and shall be subject to the provisions of R.S.4:22-17, R.S.4:22-21, and R.S.4:22-26, as appropriate.

6. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 230

AN ACT concerning the funding of special education services for nonpublic school students and supplementing P.L.1977, c.193 (C.18A:46-19.1 et seq.).

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

C.18A:46-19.10 Certain state funds excluded from minimum funding requirement calculation under IDEA.

1. State funds appropriated pursuant to P.L.1977, c.193 (C.18A:46-19.1 et seq.) to provide special education and related services to students enrolled in nonpublic schools shall not be included by a school district in the calculation of the minimum funding requirement for nonpublic school students under the "Individuals with Disabilities Education Act," 20 U.S.C. s. 1400 et seq.

2. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 231

AN ACT concerning certain claims against the shareholders of dissolved corporations and supplementing Title 14A of the New Jersey Statutes.

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

C.14A:12-13.1 Creditors barred from suing shareholders of certain dissolved corporations.

1. (1) A creditor as defined in subsection (3) of N.J.S.14A:12-12 or subsection (b) of N.J.S.14A:14-1, and all those claiming through or under the creditor, shall be forever barred from suing a shareholder on any claim, or otherwise realizing upon or enforcing any claim against a shareholder, unless that claim was filed against the shareholder, pursuant to N.J.S.14A:12-13 or N.J.S.14A:14-15, or otherwise, within five years after the corporation was dissolved.

(2) This section shall not: (a) apply to claims against shareholders which are in litigation on the effective date of this section; (b) operate to extend any otherwise applicable statute of limitations; or (c) affect any rights

of creditors under the "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq.

2. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 232

AN ACT changing the name of the Hackensack Meadowlands Development Commission to the New Jersey Meadowlands Commission, and amending and supplementing P.L.1968, c. 404 (C.13:17-1 et seq.).

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

1. Section 3 of P.L.1968, c.404 (C.13:17-3) is amended to read as follows:

C.13:17-3 Definitions.

3. 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) "Commission" means the New Jersey Meadowlands Commission created by this act or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers and duties conferred upon the commission by this act shall be given by law;

(b) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations, issued by the commission pursuant to this act;

(c) "Claimant" means a person holding or occupying riparian lands within meadowlands under color of title;

(d) "School fund" means the fund for the support of free public schools, as provided by the New Jersey Constitution, Article VIII, Section IV;

(e) "Riparian lands" are those lands now, formerly or hereafter flowed by mean high tide, except where such tidal flow is caused by artificially produced changes in land or water elevation;

(f) "Person" means and shall include all individuals, partnerships, associations, private or municipal corporations and all political subdivisions of the State;

(g) "Owner" means and shall include all persons having any title or interest in any property, rights, easements and interests authorized to be acquired, assessed or regulated by this act;

(h) "Constituent municipality" means a municipality with lands in the district;

(i) "District" means the Hackensack Meadowlands District, the area within the jurisdiction of the commission described in section 4 of this act;

(j) "Hackensack meadowlands" means all those meadowlands lying within the municipalities of Carlstadt, East Rutherford, Little Ferry, Lyndhurst, Moonachie, North Arlington, Ridgefield, Rutherford, South Hackensack and Teterboro all in Bergen county; and Jersey City, Kearny, North Bergen and Secaucus, all in Hudson county;

(k) "Master plan" means the comprehensive plan for the district prepared and adopted in accordance with article 5 of this act;

(l) "Renewal area" means an area designated by the commission pursuant to article 5 of this act whose redevelopment is necessary to effectuate the public purposes declared in this act. A renewal area may contain 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;

(m) "Project area" means all or a portion of a renewal area;

(n) "Project" means any plan, work or undertaking by the commission or by a redeveloper under contract to the commission, pursuant to the master plan or a redevelopment plan. Such undertaking may include the reclamation and improvement of meadowlands, 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, including but not limited to, streets, water systems, sewer systems, utilities, parks, site preparation, landscaping, and administrative, community, health, recreational, educational and welfare facilities, and buildings and structures in renewal areas for industrial, commercial or residential use;

(o) "Redeveloper" means any person, firm, corporation or public or private agency that shall enter into or propose to enter into a contract with the commission for the reclamation, development, redevelopment or improvement of an area or any part thereof under the provisions of this act, or for the construction of any project pursuant to the master plan or redevelopment plan;

(p) "Improvement" means (1) the laying out, opening, construction, widening, straightening, enlargement, extension, alteration, changing of location, grading, paving or otherwise improving, a street, alley or public

highway; (2) curbing or guttering of a sidewalk along a street, alley or highway; (3) construction and improvement of bridges and viaducts; (4) construction, enlargement or extension of a sewer or drain or of a sewerage or drainage system including, but not limited to, such systems under streets, alleys, or public highways or systems for drainage of marshes and wet lowlands; or works for the sanitary disposal of sewerage or drainage; (5) the installation of service connections to water, and other utility works including the laying, construction, or placing of mains, conduits, or cables under or along a street, alley or highway; (6) the construction, enlargement, or extension of water mains or water distribution works; (7) the construction, enlargement, or extension of sanitary landfills or incinerators or other facilities for the disposal of solid wastes; (8) the installation of lighting standards, appliances and appurtenances required for the illumination of streets; (9) widening, deepening, or improvement of, the removal of obstructions in, and the construction, enlargement and extension of any waterway, or of enclosing walls, or of a pipe or conduit along a water course; (10) the reclaiming, filling and improving and bulkheading lands under tidal or other water and lands adjacent to such reclaimed or filled lands, and the dredging of channels and improvement of harbor approaches in waters abounding the lands to be reclaimed, filled and improved, or bulkheaded and filled; (11) the development and improvement of parks and recreational facilities; and (12) the construction of buildings and other structures;

(q) "Redevelopment" means a program for renewal through reclamation, clearance, replanning, development and redevelopment; the rehabilitation of any improvements; conservation or rehabilitation work; the construction and provision for construction of projects; and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for such projects or other public purposes incidental or appurtenant thereto, in accordance with the master plan or any part thereof, or a redevelopment plan;

(r) "Redevelopment plan" means a plan as it exists from time to time for a redevelopment project or projects in all or any part of the district, which plan shall conform to the master plan and shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, improvements, conservation or rehabilitation work as may be proposed to be carried out in the area of the project, existing and proposed land uses, building requirements, maximum densities, zoning and planning changes, if any, public transportation and utilities, recreational and community facilities and other public improvements, and to indicate the relationship of the plan to definite regional objectives;

(s) "Site plan" means a plan for an existing lot or plot or a subdivided lot on which is shown topography, location of all existing or proposed buildings, structures, drainage facilities, roads, rights-of-way, easements, parking areas, together with any other information, and at such a scale as may be required by a commission site plan review and approval resolution;

(t) "Subdivision" means the division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of sale or building development except that the following divisions shall not be considered subdivisions within the meaning of this act; provided, however, that no new streets or roads are involved; divisions of land for agricultural purposes where the resulting parcels are three acres or larger in size, divisions of property by testamentary or intestate provisions, or divisions of property pursuant to court order;

(u) "Cost," in addition to the usual meanings thereof, means the cost of acquisition or construction of all or any part of an improvement and of all or any property, rights, easements, privileges, agreements and franchises deemed by the commission to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, cost of issuance of bonds; engineering and inspection costs and legal expenses; cost of financial, professional and other estimates and advice; organization, administration, operation and other expenses of the commission 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 said improvement or part thereof and the placing of same in operation; and also such provision or reserves for working capital, operating or maintenance or replacement expenses, or for payment or security of principal of or interest on bonds during or after such acquisition or construction; and also reimbursements to the commission or any county, municipality or other person of any moneys theretofore expended for the purpose of the commission or in connection with such improvements;

(v) "Special assessment" means an assessment for benefits accruing from the construction of improvements by or at the direction of the commission;

(w) "Committee" means the Hackensack Meadowlands Municipal Committee established pursuant to article 4 of this act;

(x) "Solid waste" shall mean any refuse matter, trash or garbage from residences, hotels, apartments or any other public or private building, but shall not include water-carried wastes or the kinds of wastes usually collected, carried away and disposed of by a sewerage system;

(y) "Solid waste disposal facilities" shall mean the plants, structures and other real and personal property acquired, constructed or operated, or to be

acquired, constructed or operated by the commission, as hereinafter provided, including incinerators, sanitary landfills or other plants or facilities for the treatment and disposal of solid waste.

C.13:17-3.1 References to HMDC deemed to be New Jersey Meadowlands Commission.

2. On and after the effective date of this act, any reference in any law, rule, regulation, order, contract or document to the "Hackensack Meadowlands Development Commission" shall be deemed to mean and refer to the "New Jersey Meadowlands Commission."

3. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 233

AN ACT concerning luring and enticing a child and amending P.L.1993, c.291.

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

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

C.2C:13-6 Luring, enticing child by various means, attempts; crime of third degree; subsequent offense, mandatory imprisonment.

1. A person commits a crime of the third degree if he attempts, via electronic or any other means, to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

"Child" as used in this act means a person less than 18 years old.

"Electronic means" as used in this section includes, but is not limited to, the Internet, which shall have the meaning set forth in N.J.S. 2C:24-4.

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

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

A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment. Notwithstanding the provisions of paragraph (3) of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half of the sentence imposed, or two years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purposes of this section an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to this section, or under any similar statute of the United States, this State or any other state for an offense that is substantially equivalent to this section.

2. This act shall take effect immediately.

Approved August 27, 2001.

CHAPTER 234

AN ACT concerning the use of certain residential facilities by Medicaid recipients and supplementing Title 30 of the Revised Statutes.

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

C.26:2H-12.16 Definitions relative to residential facilities for Medicaid recipients; 10 percent utilization requirement.

1. a. For the purposes of this act, "Medicaid" means the program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and "Medicaid-eligible" means that a person is determined to meet the financial eligibility standards for medical assistance under the State Medicaid program and is approved by the Department of Health and Senior Services for participation in a federally approved 1915(c) waiver program that provides assisted living services.

b. A new facility that is licensed to operate an assisted living residence or comprehensive personal care home after the effective date of this act shall reserve 10% of its total bed compliment for use by Medicaid-eligible

persons. The 10% utilization by Medicaid-eligible persons shall be met through Medicaid conversion of persons who enter the assisted living residence or comprehensive personal care home as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons. An assisted living residence or comprehensive personal care home shall achieve this 10% utilization within three years of licensure to operate and shall maintain this level of utilization thereafter.

c. Existing assisted living residences and comprehensive personal care homes that add additional assisted living beds shall be required, as a condition of licensure approval, to maintain 10% of the additional beds for Medicaid-eligible persons through Medicaid conversion of persons who enter the assisted living residence or comprehensive personal care home as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons. If the total number of additional beds is less than 10, at least one of the additional beds shall be reserved for a Medicaid-eligible person.

C.26:2H-12.17 Waiver of utilization requirement.

2. The Commissioner of Health and Senior Services may waive the 10% utilization requirement or reduce the required percentage by regulation for specific regions of the State or Statewide if he determines that sufficient numbers of assisted living beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the federal waiver to provide assisted living services through the Medicaid program.

C.26:2H-12.18 Reserve requirement as fulfillment of utilization requirements.

3. The 10% reserve requirement of this act shall be recognized to fulfill all or a portion, as applicable, of low and moderate income or Medicaid utilization requirements contained in municipal ordinances and shall satisfy all or a portion, as applicable, of low income housing requirements for assisted living residences or comprehensive personal care homes that are financed by bonds mandating low income housing as a condition of financing.

C.26:2H-12.19 Construction of act.

4. Nothing in this act shall be construed to: prohibit an existing assisted living residence, comprehensive personal care home or assisted living program, which is not affected by this act, from participating in the Medicaid program; or create an entitlement to financing under the Medicaid program for services provided at assisted living residences or comprehensive personal care homes.

C.26:2H-12.20 Applicability of act.

5. This act shall not apply to an assisted living residence or comprehensive personal care home operated by a continuing care retirement community operating under a certificate of authority issued by the Department of Community Affairs pursuant to P.L.1986, c.103 (C.52:27D-330 et seq.).

C.26:2H-12.21 Regulations.

6. The Commissioner of Health and Senior Services shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to carry out the purposes of this act.

7. This act shall take effect immediately.

Approved August 31, 2001.

CHAPTER 235

AN ACT concerning certain insurer practices regarding homeowners' insurance.

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

C.17:29B-4.1 Certain homeowners' insurance inquiries not deemed as claim; violations, penalties.

1. a. No inquiry by an insured for information regarding the insured's homeowners' insurance policy, or coverage for a particular loss under that policy, shall be categorized as a claim for the purpose of determining adverse claims experience.

b. An insurer who violates this act shall be subject to a penalty of up to \$5,000 for each violation unless the insurer knew or reasonably should have known he was in violation of this act, in which case the penalty shall not be more than \$25,000 for each violation. The penalty shall be collected in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, C.274 (C.2A:58-10 et seq.).

2. This act shall take effect immediately.

Approved August 31, 2001.

CHAPTER 236

AN ACT requiring health insurers to provide coverage for medically necessary expenses incurred in the diagnosis and treatment of infertility and supplementing various parts of the statutory law.

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

C.17:48-6x Hospital service corporation to provide coverage for treatment of infertility.

1. a. A hospital service corporation contract which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the contract provides coverage for persons covered under the contract for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The hospital service corporation contract shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; embryo transfer; artificial insemination; gamete intra fallopian transfer; zygote intra fallopian transfer; intracytoplasmic sperm injection; and four completed egg retrievals per lifetime of the covered person. The hospital service corporation may provide that coverage for in vitro fertilization, gamete intra fallopian transfer and zygote intra fallopian transfer shall be limited to a covered person who: a. has used all reasonable, less expensive and medically appropriate treatments and is still unable to become pregnant or carry a pregnancy; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger.

For purposes of this section, "infertility" means the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to: impregnate another person; conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth.

The benefits shall be provided to the same extent as for other pregnancy-related procedures under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same

copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract.

b. A religious employer may request, and a hospital service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

d. The provisions of this section shall not apply to a hospital service corporation contract which, pursuant to a contract between the hospital service corporation and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.), the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

C.17:48A-7w Medical service corporation to provide coverage for treatment of infertility.

2. a. A medical service corporation contract which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the contract provides coverage for persons covered under the contract for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The medical service corporation contract shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; embryo transfer;

artificial insemination; gamete intra fallopian transfer; zygote intra fallopian transfer; intracytoplasmic sperm injection; and four completed egg retrievals per lifetime of the covered person. The medical service corporation may provide that coverage for in vitro fertilization, gamete intra fallopian transfer and zygote intra fallopian transfer shall be limited to a covered person who: a. has used all reasonable, less expensive and medically appropriate treatments and is still unable to become pregnant or carry a pregnancy; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger.

For purposes of this section, "infertility" means the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to: impregnate another person; conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth.

The benefits shall be provided to the same extent as for other pregnancy-related procedures under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract.

b. A religious employer may request, and a medical service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The medical service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than ten point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

d. The provisions of this section shall not apply to a medical service corporation contract which, pursuant to a contract between the medical service corporation and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.), the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

C.17:48E-35.22 Health service corporation to provide coverage for treatment of infertility.

3. a. A health service corporation contract which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the contract provides coverage for persons covered under the contract for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The health service corporation contract shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; embryo transfer; artificial insemination; gamete intra fallopian transfer; zygote intra fallopian transfer; intracytoplasmic sperm injection; and four completed egg retrievals per lifetime of the covered person. The health service corporation may provide that coverage for in vitro fertilization, gamete intra fallopian transfer and zygote intra fallopian transfer shall be limited to a covered person who: a. has used all reasonable, less expensive and medically appropriate treatments and is still unable to become pregnant or carry a pregnancy; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger.

For purposes of this section, "infertility" means the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to: impregnate another person; conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth.

The benefits shall be provided to the same extent as for other pregnancy-related procedures under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine

or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract.

b. A religious employer may request, and a health service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The health service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than ten point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those health service corporation contracts in which the health service corporation has reserved the right to change the premium.

d. The provisions of this section shall not apply to a health service corporation contract which, pursuant to a contract between the health service corporation and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.), the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

C.17B:27-46.1x Group health insurance policy to provide coverage for treatment of infertility.

4. a. A group health insurance policy which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the policy provides coverage for persons covered under the policy for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The policy shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications;

surgery; in vitro fertilization; embryo transfer; artificial insemination; gamete intra fallopian transfer; zygote intra fallopian transfer; intracytoplasmic sperm injection; and four completed egg retrievals per lifetime of the covered person. The insurer may provide that coverage for in vitro fertilization, gamete intra fallopian transfer and zygote intra fallopian transfer shall be limited to a covered person who: a. has used all reasonable, less expensive and medically appropriate treatments and is still unable to become pregnant or carry a pregnancy; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger.

For purposes of this section, "infertility" means the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to: impregnate another person; conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth.

The benefits shall be provided to the same extent as for other pregnancy-related procedures under the policy, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the policy.

b. A religious employer may request, and an insurer shall grant, an exclusion under the policy for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The insurer that issues a policy containing such an exclusion shall provide written notice thereof to each prospective insured or insured, which shall appear in not less than ten point type, in the policy, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those insurance policies in which the insurer has reserved the right to change the premium.

d. The provisions of this section shall not apply to a group health insurance policy which, pursuant to a contract between the insurer and the

Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.), the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

C.26:2J-4.23 Health maintenance organization to provide coverage for treatment of infertility.

5. a. No certificate of authority to establish and operate a health maintenance organization in this State shall be issued or continued on or after the effective date of this act unless the health maintenance organization provides health care services, to groups of more than 50 enrollees, for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. A health maintenance organization shall provide enrollee coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; embryo transfer; artificial insemination; gamete intra fallopian transfer; zygote intra fallopian transfer; intracytoplasmic sperm injection; and four completed egg retrievals per lifetime of the enrollee. The health maintenance organization may provide that health care services for in vitro fertilization, gamete intra fallopian transfer and zygote intra fallopian transfer shall be limited to a covered person who: a. has used all reasonable, less expensive and medically appropriate treatments and is still unable to become pregnant or carry a pregnancy; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger.

For the purposes of this section, "infertility" means the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to: impregnate another person; conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth.

The health care services shall be provided to the same extent as for other pregnancy-related procedures under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical health care services under the contract.

b. A religious employer may request, and a health maintenance organization shall grant, an exclusion under the contract for the health care services required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required health care services are contrary to the religious employer's bona fide religious tenets. The health maintenance organization that issues a contract containing such an exclusion shall provide written notice thereof to each prospective enrollee or enrollee, which shall appear in not less than ten point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. The provisions of this section shall apply to those contracts for health care services by health maintenance organizations under which the right to change the schedule of charges for enrollee coverage is reserved.

d. The provisions of this section shall not apply to a contract for health care services by a health maintenance organization which, pursuant to a contract between the health maintenance organization and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.), the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

6. This act shall take effect 90 days after enactment and shall apply to policies or contracts issued or renewed on or after the effective date

Approved August 31, 2001.

CHAPTER 237

AN ACT concerning the filing of certain life insurance policy forms and certain actions by employees of the Department of Banking and Insurance and supplementing Title 17B of the New Jersey Statutes.

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

C.17B:25-18.4 Filing of certain forms of life insurance approved in other states.

1. a. Notwithstanding the provisions of any other law to the contrary and pursuant to the provisions of this section, an insurer authorized to do business in this State may file with the Commissioner of Banking and Insurance and make available for sale or use, in accordance with subsection d. of this section, any form of life insurance policy, annuity, variable contract, endorsement, riders and application forms. The form shall be accompanied by a certification memorandum that includes a statement that it is filed in accordance with the provisions of this section, and which is executed by a responsible officer of the insurer. The certification shall state that the form has been made available for sale or use in accordance with current state regulations governing the type of product submitted, subject to state variations that do not alter the unique product features or design of the product, in 40 states. If that certification is made, the form shall be available for sale or use in the State of New Jersey. Filing pursuant to this section shall not preclude an insurer from filing under other laws or rules and regulations of this State.

b. Policy and contract forms, including related endorsements, riders and application forms, eligible for certification pursuant to this section shall include, but not be limited to, individual life, individual annuity, group annuity, group life, variable life and variable annuity contracts, excluding specified disease and critical illness policies or contracts.

c. The certification memorandum shall be signed and acknowledged by a responsible officer of the insurer. The acknowledgment by that officer shall be done in the same manner in which documents for recording instruments conveying or affecting interests in real estate in this State must be acknowledged to be eligible for recording, or in such other manner as specified by the commissioner by regulation from time to time.

d. Upon receipt of an acknowledgment from the commissioner that the form and the certification memorandum which conforms to the requirements of this section have been received, the form so submitted may be used in this State by the insurer. The acknowledgment shall be sent by first class mail by the commissioner to the insurer within 30 days of receipt by the commissioner of the form and the certification memorandum that conforms to the requirements of this section.

e. (1) An insurer submitting an improper certification shall be subject to a fine not to exceed \$50,000 and, in addition, a maximum penalty of \$1,000 per policy issued on a form determined to be improperly certified pursuant to the provisions of this section. The commissioner shall promulgate a schedule of penalties to be applied pursuant to this section. In determining the amount of any penalty to be imposed, the commissioner shall consider

the severity of the violation based upon the potential adverse impact to the public and whether it is the filer's first violation of this section.

(2) If, after notice and a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an insurer is found by the commissioner to be in violation of this section, the form may be disapproved, and in addition to any other penalties that may be imposed under Title 17B of the New Jersey Statutes, the commissioner may bar that insurer from participating in the certification process pursuant to this section for a period not to exceed one year.

f. (1) Initial regulations shall be adopted pursuant to this section no later than 120 days after enactment of this act. These regulations shall stand on their own and deal solely and specifically with the provisions of this section and only address the certification and the process of certification required by this section.

(2) Until the commissioner adopts rules and regulations pursuant to this act, an insurer may submit certifications in any format that satisfies the requirements of this section.

(3) The commissioner shall submit an annual report, on or before December 1, to the Governor and the Legislature, on the administration of this act including, but not limited to, the number and type of forms approved and rejected pursuant to the provisions of this section.

g. (1) The certification memorandum shall list the 40 States, the form number submitted and the date that form was made available for sale or use in each state.

(2) An insurer who files in accordance with this section shall be exempt from the certification requirements of section 17 of P.L.1995, c.73 (C.17B:25-18.3).

h. For purposes of this section:

(1) "A responsible officer of the insurer" means a corporate officer of the level of vice president or higher, or of equivalent title within the insurer's structure, who is either the actuary of the insurer with responsibility for the type of form filed, or the individual with responsibility for managing the form filing process for the insurer with regard to the type of form filed;

(2) "Available for sale or use" means that the insurer has complied with the state's laws, regulations, and procedures to allow the insurer to sell or use the form in that state;

(3) "Improper certification" means providing any misrepresentation or false statement material to a certification form required.

C.17B:25-18.5 Certain actions taken by department employees to result in termination.

2. a. An officer or employee of the Department of Banking and Insurance shall not take or threaten any action or omission in retaliation

against a person for efforts of that person, or a person acting on his behalf, to secure or enforce any rights under contract, the laws of this State or the laws of the United States, or the good faith complaint of that person, or a person acting on his behalf, to any other government official, officer or employee or other person concerning any actions or omissions of the officer or employee of the department in regard to that person.

b. Any officer or employee who violates the provisions of subsection a. of this section shall, after notice and a hearing, be terminated from employment with the State.

3. This act shall take effect immediately.

Approved August 31, 2001.

CHAPTER 238

AN ACT creating the "Main Street New Jersey" program in the Department of Community Affairs and supplementing chapter 27D of Title 52 of the Revised Statutes.

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

C.52:27D-452 "Main Street New Jersey" program; duties of DCA.

1. a. There is created in the Division of Housing and Community Resources in the Department of Community Affairs the "Main Street New Jersey" program as a comprehensive revitalization program to promote the historic and economic redevelopment of traditional business districts in the State. The purpose of the program shall be to provide small business assistance services to local downtown communities, including business owners and entrepreneurs, with a long-term goal of revitalizing local downtown areas.

b. The Department of Community Affairs shall administer the "Main Street New Jersey" program created under subsection a. of this section. The duties of the department in implementing this program shall include, but not be limited to, the following:

- 1) employment, in the State classified service, of a State Coordinator and staff for the "Main Street New Jersey" program;
- 2) entering into contracts with the National Main Street Center and others to assist in accomplishing the program's objectives and provide

technical assistance to the "Main Street New Jersey" program and local programs;

3) development of a plan, with the assistance of the Main Street New Jersey Advisory Board established pursuant to section 5 of P.L.2001, c.238 (C.52:27D-456), describing the objectives of the "Main Street New Jersey" program and detailing the methods by which the department shall coordinate the activities of the program with private and public sector revitalization of downtown business areas, solicit and use private sector funding for revitalization of downtown areas, and help municipalities engage in revitalization of their downtown business areas; and

4) coordination and cooperation with other State and local public and private entities that provide services to municipalities undertaking projects for the revitalization of downtown business areas.

C.52:27D-453 Rules, regulations.

2. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Community Affairs shall adopt rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for providing assistance under the "Main Street New Jersey" program.

C.52:27D-454 Assistance provided to certain municipalities.

3. The commissioner shall provide assistance under this program to municipalities selected through a competitive application process. A municipality shall have historic architectural resources in a defined downtown commercial district, a commitment to employ a full-time Executive Director for its "Main Street New Jersey" program, establishment of a volunteer board of directors, development of public-private partnerships and a program operating budget deemed adequate by the commissioner for not less than three years. A municipality having a population of not more than 20,000, according to the most recent federal decennial census, shall not be required to employ a full-time Executive Director for its program.

The commissioner may also provide limited assistance through the "Main Street New Jersey" program to any municipality through training, technical assistance and information on the revitalization of central business districts.

C.52:27D-455 Services provided to municipality selected for program.

4. The commissioner shall provide services to each municipality selected to participate in the "Main Street New Jersey" program at no additional cost to the municipality. Those services shall include, but shall not be limited to:

- a. In-depth volunteer and executive director training;

- b. Advanced training on specific downtown issues, including but not limited to marketing, business recruitment, volunteer management and historic preservation;
- c. Visits by professional consultants to help each municipality develop its strengths and plan for the success of its downtown area;
- d. Small business development consulting services for local business owners;
- e. Marketing and public relations consulting for local businesses and "Main Street New Jersey" organizations;
- f. Architectural design consulting for business and property owners;
- g. Educational materials, including manuals and slide programs;
- h. Links to local, State and federal "Main Street" community networks.

C.52:27D-456 Main Street New Jersey Advisory Board.

5. The Main Street New Jersey Advisory Board is established for the purposes of providing guidance and advocacy in formulating policy and assisting with the long-term planning and administration of the "Main Street New Jersey" program. The Main Street New Jersey Advisory Board shall consist of 19 members. Fifteen members shall serve in a voluntary capacity, to be appointed through a process to be determined by the commissioner. Each voluntary member shall have a demonstrated commitment to the goals of the "Main Street New Jersey" program. The voluntary members shall represent all geographic regions of the State.

The remaining four advisory board members shall serve ex officio and shall be a representative of the Historic Preservation Program in the Department of Environmental Protection, to be appointed by the Commissioner of Environmental Protection, a representative of the Neighborhood Preservation Program in the Department of Community Affairs, to be appointed by the Commissioner of Community Affairs, a representative of the Housing and Mortgage Finance Agency, to be appointed by the executive director of that agency, and a representative of the Commerce and Economic Development Commission, to be appointed by the chief operating officer of that commission.

The terms of the voluntary members so appointed, after the initial appointments, shall be three years, and each member may be reappointed. The terms of initial appointments of the voluntary members shall be staggered so that the terms of 1/3 of the advisory board's voluntary members shall expire annually. The advisory board members who are not State employees shall be entitled to reimbursement of their expenses incurred in connection with their duties on the advisory board.

C.52:27D-457 "Main Street New Jersey Program Fund."

6. There is established in the Department of Community Affairs the "Main Street New Jersey Program Fund," which shall consist of all funds appropriated to the "Main Street New Jersey" program by the Legislature, and also any gifts, contributions, grants or bequests received from the federal government or any other source. Money in the "Main Street New Jersey Program Fund" shall be used to carry out the provisions of P.L.2001, c.238 (C.52:27D-452 et seq.) and for no other purposes. Any funds remaining in the fund at the end of any fiscal year shall not lapse to the General Fund, but shall remain in the fund.

C.52:27D-458 Continued provision of assistance to municipalities selected prior to law.

7. The commissioner shall continue to provide the assistance required under P.L.2001, c.238 (C.52:27D-452 et seq.) to municipalities that were selected to participate in the "Main Street New Jersey" program prior to the effective date of P.L.2001, c.238 (C.52:27D-452 et seq.).

8. There shall be annually appropriated to the "Main Street New Jersey" program an amount necessary to effectuate the provisions of P.L.2001, c.238 (C.52:27D-452 et seq.).

9. This act shall take effect immediately.

Approved August 31, 2001.

CHAPTER 239

AN ACT concerning the rehabilitation and improvement of the State transportation system and local bridges, and making appropriations from the "1999 Statewide Transportation and Local Bridge Fund."

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

1. The appropriations made pursuant to sections 2 and 3 of this act are appropriated out of the "1999 Statewide Transportation and Local Bridge Fund" established in section 14 of the "Statewide Transportation and Local Bridge Bond Act of 1999," P.L.1999, c.181.

2. a. There is appropriated to the Department of Transportation the sum of \$100,000,000 for grants to county and municipal governments for the

cost of construction, reconstruction, demolition, removal, replacement, improvement, repair or rebuilding of structurally deficient bridges carrying county or municipal roads, which shall be allocated, expended, and administered by the Department of Transportation for the following counties in the following amounts:

COUNTY	AMOUNT
Atlantic	\$3,225,000
Bergen	7,365,000
Burlington	3,783,000
Camden	3,627,000
Cape May	2,400,000
Cumberland	2,400,000
Essex	6,429,000
Gloucester	2,400,000
Hudson	4,195,000
Hunterdon	3,095,000
Mercer	4,228,000
Middlesex	4,406,000
Monmouth	10,000,000
Morris	4,066,000
Ocean	3,876,000
Passaic	6,652,000
Salem	2,400,000
Somerset	5,839,000
Sussex	2,400,000
Union	4,814,000
Warren	2,400,000
Statewide Discretionary	<u>10,000,000</u>
TOTAL	\$100,000,000

b. Any funds appropriated for the rehabilitation and improvement of deficient bridges pursuant to the provisions of this section that are not obligated within four years of the effective date of this act shall be consolidated into a single account and redistributed to all 21 counties on the same proportional basis as the original appropriation. Funds that have not been obligated, but are required to complete a project under development, will not be subject to consolidation and redistribution.

3. There is appropriated to the Department of Transportation the sum of \$45,000,000 for the following transportation projects:

PROJECT	AMOUNT
Betterments, Bridge Preservation	\$1,700,000
Betterments, Safety	2,000,000
Doremus Avenue Bridge over Oak Island Yards, Essex County	17,900,000
Resurfacing Program, State Route 1 at Meadow Road, Mercer County	<u>2,100,000</u>
TOTAL	\$45,000,000

4. Any request to transfer funds between projects identified in section 3 of this act shall require the approval of the Director of the Division of Budget and Accounting, and the Legislative Budget and Finance Officer.

5. This act shall take effect immediately.

Approved September 4, 2001.

CHAPTER 240

AN ACT concerning the civil service system and amending N.J.S.11A:3-7.

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

1. N.J.S.11A:3-7 is amended to read as follows:

Employee compensation.

11A:3-7. a. The commissioner shall administer an equitable State employee compensation plan which shall include pay schedules and standards and procedures for salary adjustments other than as provided for in the State compensation plan for the career, senior executive and unclassified services.

b. Prior to adoption or implementation of an amendment, change or modification to the compensation plan for State employees which amendment, change or modification affects public employees represented by a majority representative selected or designated pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3), the State shall negotiate with the majority representative for an agreement on the amendment, change or modification

to the compensation plan. The State shall negotiate in good faith with the majority representative. A State employee compensation plan shall not be amended, changed or modified except pursuant to a written agreement entered into between the State and the majority representative following negotiations.

c. When an employee has erroneously received a salary overpayment, the commissioner may waive repayment based on a review of the case.

d. Employees of political subdivisions are to be paid in reasonable relationship to titles and shall not be paid a base salary below the minimum or above the maximum established salary for an employee's title.

2. This act shall take effect immediately.

Approved September 6, 2001.

CHAPTER 241

AN ACT concerning layoffs in the civil service system and amending N.J.S.11A:8-1 and N.J.S.11A:8-2.

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

1. N.J.S.11A:8-1 is amended to read as follows:

Layoff.

11A:8-1. a. A permanent employee may be laid off for economy, efficiency or other related reason. A permanent employee shall receive 45 days' written notice, unless in State government a greater time period is ordered by the commissioner, which shall be served personally or by certified mail, of impending layoff or demotion and the reasons therefor. The notice shall expire 120 days after service unless extended by the commissioner for good cause. At the same time the notice is served, the appointing authority shall provide the commissioner with a list of the names and permanent titles of all employees receiving the notice. The board shall adopt rules to implement employee layoff rights consistent with the provisions of this section, upon recommendation by the commissioner. The commissioner shall consult with the advisory board representing labor organizations prior to such recommendations.

b. Permanent employees in the service of the State or a political subdivision shall be laid off in inverse order of seniority. As used in this

subsection, "seniority" means the length of continuous permanent service in the jurisdiction, regardless of title held during the period of service, except that for police and firefighting titles, "seniority" means the length of continuous permanent service only in the current permanent title and any other title that has lateral or demotional rights to the current permanent title. Seniority for all titles shall be based on the total length of calendar years, months and days in continuous permanent service regardless of the length of the employee's work week, work year or part-time status.

c. For purposes of State service, a "layoff unit" means a department or autonomous agency and includes all programs administered by that department or agency. For purposes of political subdivision service, the "layoff unit" means a department in a county or municipality, an entire autonomous agency, or an entire school district, except that the commissioner may establish broader layoff units.

d. For purposes of State service, "job location" means a county. The commissioner shall assign a job location to every facility and office within a State department or autonomous agency. For purposes of local service, "job location" means the entire political subdivision and includes any facility operated by the political subdivision outside its geographic borders.

e. For purposes of determining lateral title rights in State and political subdivision service, title comparability shall be determined by the department based upon whether the: (1) titles have substantially similar duties and responsibilities; (2) education and experience requirements for the titles are identical or similar; (3) employees in an affected title, with minimal training and orientation, could perform the duties of the designated title by virtue of having qualified for the affected title; and (4) special skills, licenses, certifications or registration requirements for the designated title are similar and do not exceed those which are mandatory for the affected title. Demotional title rights shall be determined by the commissioner based upon the same criteria, except that the demotional title shall have lower but substantially similar duties and responsibilities as the affected title.

f. In State service, a permanent employee in a position affected by a layoff action shall be provided with applicable lateral and demotional title rights first, at the employee's option, within the municipality in which the facility or office is located and then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations and shall indicate job locations at which the employee will accept lateral and demotional title rights. In local service, a permanent employee in a position affected by a layoff action shall be provided lateral and demotional title rights within the layoff unit.

g. Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

(1) a vacant position that the appointing authority has previously indicated it is willing to fill;

(2) a position held by a provisional employee who does not have permanent status in another title, and if there are multiple employees at a job location, the specific position shall be determined by the appointing authority;

(3) a position held by a provisional employee who has permanent status in another title, and if there are multiple provisional employees at a job location, the specific position shall be determined based on level of the permanent title held and seniority;

(4) the position held by the employee serving in a working test period with the least seniority;

(5) in State service, and in local jurisdictions having a performance evaluation program approved by the department, the position held by the permanent employee whose performance rating within the most recent 12 months in the employee's permanent title was significantly below standards or an equivalent rating;

(6) in State service, and in local jurisdictions having a performance evaluation program approved by the department, the position held by the permanent employee whose performance rating within the most recent 12 months in the employee's permanent title was marginally below standards or an equivalent rating; and

(7) the position held by the permanent employee with the least seniority.

h. A permanent employee shall be granted special reemployment rights based on the employee's permanent title at the time of the layoff action and the employee shall be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the commissioner in the same manner as lateral and demotional rights.

2. N.J.S.11A:8-2 is amended to read as follows:

Pre-layoff actions.

11A:8-2. a. An appointing authority shall lessen the possibility, extent or impact of layoffs by implementing pre-layoff actions, which may include but need not be limited to:

(1) initiating a temporary hiring or promotion freeze;

(2) separating non-permanent employees;

(3) returning provisional employees to their permanent titles;

- (4) reassigning employees; and
- (5) assisting potentially affected employees in securing transfers or other employment.

b. An appointing authority shall consult with the majority representative of public employees selected or designated pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3) that represents the affected employees prior to implementing pre-layoff actions pursuant to this section.

3. This act shall take effect immediately.

Approved September 6, 2001.

CHAPTER 242

AN ACT concerning electric power and gas suppliers and amending P.L.1999, c.23.

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

1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as follows:

C.48:3-51 Definitions relative to competition in the electric power and gas industries.

3. As used in this act:

"Assignee" means a person to which an electric public utility or another assignee assigns, sells or transfers, other than as security, all or a portion of its right to or interest in bondable transition property. Except as specifically provided in this act, an assignee shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the board;

"Basic generation service" means electric generation service that is provided, pursuant to section 9 of this act, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic

generation service is not a competitive service and shall be fully regulated by the board;

"Board" means the New Jersey Board of Public Utilities or any successor agency;

"Bondable stranded costs" means any stranded costs of an electric public utility approved by the board for recovery pursuant to the provisions of this act, together with, as approved by the board: (1) the cost of retiring existing debt or equity capital of the electric public utility, including accrued interest, premium and other fees, costs and charges relating thereto, with the proceeds of the financing of bondable transition property; (2) if requested by an electric public utility in its application for a bondable stranded costs rate order, federal, State and local tax liabilities associated with stranded costs recovery or the transfer or financing of such property or both, including taxes, whose recovery period is modified by the effect of a stranded costs recovery order, a bondable stranded costs rate order or both; and (3) the costs incurred to issue, service or refinance transition bonds, including interest, acquisition or redemption premium, and other financing costs, whether paid upon issuance or over the life of the transition bonds, including, but not limited to, credit enhancements, service charges, overcollateralization, interest rate cap, swap or collar, yield maintenance, maturity guarantee or other hedging agreements, equity investments, operating costs and other related fees, costs and charges, or to assign, sell or otherwise transfer bondable transition property;

"Bondable stranded costs rate order" means one or more irrevocable written orders issued by the board pursuant to this act which determines the amount of bondable stranded costs and the initial amount of transition bond charges authorized to be imposed to recover such bondable stranded costs, including the costs to be financed from the proceeds of the transition bonds, as well as on-going costs associated with servicing and credit enhancing the transition bonds, and provides the electric public utility specific authority to issue or cause to be issued, directly or indirectly, transition bonds through a financing entity and related matters as provided in this act, which order shall become effective immediately upon the written consent of the related electric public utility to such order as provided in this act;

"Bondable transition property" means the property consisting of the irrevocable right to charge, collect and receive, and be paid from collections of, transition bond charges in the amount necessary to provide for the full recovery of bondable stranded costs which are determined to be recoverable in a bondable stranded costs rate order, all rights of the related electric public utility under such bondable stranded costs rate order including, without limitation, all rights to obtain periodic adjustments of the related transition bond charges pursuant to subsection b. of section 15 of this act,

and all revenues, collections, payments, money and proceeds arising under, or with respect to, all of the foregoing;

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas;

"Buydown" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a reduction in the pricing, or the restructuring of other terms to reduce the overall cost of the power contract, for the remaining succeeding period of the purchased power arrangement or arrangements;

"Buyout" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a termination of such power purchase contract;

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner;

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydropower facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities;

"Competitive service" means any service offered by an electric public utility or a gas public utility that the board determines to be competitive pursuant to section 8 or section 10 of this act or that is not regulated by the board;

"Comprehensive resource analysis" means an analysis including, but not limited to, an assessment of existing market barriers to the implementation of energy efficiency and renewable technologies that are not or cannot be delivered to customers through a competitive marketplace;

"Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State;

"Customer account service" means metering, billing, or such other administrative activity associated with maintaining a customer account;

"Demand side management" means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State;

"Electric generation service" means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto;

"Electric power generator" means an entity that proposes to construct, own, lease or operate, or currently owns, leases or operates, an electric power production facility that will sell or does sell at least 90 percent of its output, either directly or through a marketer, to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located. The designation of an entity as an electric power generator for the purposes of this act shall not, in and of itself, affect the entity's status as an exempt wholesale generator under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq.;

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of this act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of this act;

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that transmits and distributes electricity to end users within this State;

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Electronic signature" means an electronic sound, symbol or process, attached to, or logically associated with, a contract or other record, and executed or adopted by a person with the intent to sign the record;

"Energy agent" means a person that is duly registered pursuant to the provisions of this act, that arranges the sale of retail electricity or electric

related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold;

"Energy consumer" means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator;

"Financing entity" means an electric public utility, a special purpose entity, or any other assignee of bondable transition property, which issues transition bonds. Except as specifically provided in this act, a financing entity which is not itself an electric public utility shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Gas public utility" means a public utility, as that term is defined in R.S.48:2-13, that distributes gas to end users within this State;

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Gas supplier" means a person that is duly licensed pursuant to the provisions of this act to offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the board pursuant to subsection k. of section 10 of this act;

"Gas supply service" means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service;

"Government aggregator" means any government entity subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written contract with a licensed electric power supplier or a licensed gas supplier for: (1) the provision of electric generation service, electric related service, gas supply service, or gas

related service for its own use or the use of other government aggregators; or (2) if a municipal or county government, the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Government energy aggregation program" means a program and procedure pursuant to which a government aggregator enters into a written contract for the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Governmental entity" means any federal, state, municipal, local or other governmental department, commission, board, agency, court, authority or instrumentality having competent jurisdiction;

"Market transition charge" means a charge imposed pursuant to section 13 of this act by an electric public utility, at a level determined by the board, on the electric public utility customers for a limited duration transition period to recover stranded costs created as a result of the introduction of electric power supply competition pursuant to the provisions of this act;

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers;

"Net proceeds" means proceeds less transaction and other related costs as determined by the board;

"Net revenues" means revenues less related expenses, including applicable taxes, as determined by the board;

"On-site generation facility" means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way;

"Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity;

"Private aggregator" means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do

business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers;

"Public utility holding company" means: (1) any company that, directly or indirectly, owns, controls, or holds with power to vote, ten percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor;

"Regulatory asset" means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled "Accounting for the Effects of Certain Types of Regulation," or any successor standard and as deemed recoverable by the board;

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services;

"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility;

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse;

"Restructuring related costs" means reasonably incurred costs directly related to the restructuring of the electric power industry, including the

closure, sale, functional separation and divestiture of generation and other competitive utility assets by a public utility, or the provision of competitive services as such costs are determined by the board, and which are not stranded costs as defined in this act but may include, but not be limited to, investments in management information systems, and which shall include expenses related to employees affected by restructuring which result in efficiencies and which result in benefits to ratepayers, such as training or retraining at the level equivalent to one year's training at a vocational or technical school or county community college, the provision of severance pay of two weeks of base pay for each year of full-time employment, and a maximum of 24 months' continued health care coverage. Except as to expenses related to employees affected by restructuring, "restructuring related costs" shall not include going forward costs;

"Retail choice" means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service or basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of this act;

"Shopping credit" means an amount deducted from the bill of an electric public utility customer to reflect the fact that such customer has switched to an electric power supplier and no longer takes basic generation service from the electric public utility;

"Social program" means a program implemented with board approval to provide assistance to a group of disadvantaged customers, to provide protection to consumers, or to accomplish a particular societal goal, and includes, but is not limited to, the winter moratorium program, utility practices concerning "bad debt" customers, low income assistance, deferred payment plans, weatherization programs, and late payment and deposit policies, but does not include any demand side management program or any environmental requirements or controls;

"Societal benefits charge" means a charge imposed by an electric public utility, at a level determined by the board, pursuant to, and in accordance with, section 12 of this act;

"Stranded cost" means the amount by which the net cost of an electric public utility's electric generating assets or electric power purchase commitments, as determined by the board consistent with the provisions of this act, exceeds the market value of those assets or contractual commitments in a competitive supply marketplace and the costs of buydowns or buyouts of power purchase contracts;

"Stranded costs recovery order" means each order issued by the board in accordance with subsection c. of section 13 of this act which sets forth the amount of stranded costs, if any, the board has determined an electric public

utility is eligible to recover and collect in accordance with the standards set forth in section 13 and the recovery mechanisms therefor;

"Transition bond charge" means a charge, expressed as an amount per kilowatt hour, that is authorized by and imposed on electric public utility ratepayers pursuant to a bondable stranded costs rate order, as modified at any time pursuant to the provisions of this act;

"Transition bonds" means bonds, notes, certificates of participation or beneficial interest or other evidences of indebtedness or ownership issued pursuant to an indenture, contract or other agreement of an electric public utility or a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance or refinance bondable stranded costs and which are, directly or indirectly, secured by or payable from bondable transition property. References in this act to principal, interest, and acquisition or redemption premium with respect to transition bonds which are issued in the form of certificates of participation or beneficial interest or other evidences of ownership shall refer to the comparable payments on such securities;

"Transmission and distribution system" means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within this State; and

"Universal service" means any service approved by the board with the purpose of assisting low-income residential customers in obtaining or retaining electric generation or delivery service.

2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as follows:

C.48:3-85 Consumer protection standards.

36. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim consumer protection standards for electric power suppliers or gas suppliers, within 90 days of February 9, 1999, including, but not limited to, standards for collections, credit, contracts, authorized changes of an energy consumer's electric power supplier or gas supplier, for the prohibition of discriminatory marketing, for advertising and for disclosure. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18

months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

(1) Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts must conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved by the board; have the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by an electric power supplier, gas supplier or private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board.

(2) Standards for the prohibition of discriminatory marketing standards shall provide at a minimum that a decision made by an electric power supplier or a gas supplier to accept or reject a customer shall not be based on race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location. The board shall adopt reporting requirements to monitor compliance with such standards.

(3) Advertising standards for electric power suppliers or gas suppliers shall provide, at a minimum, that optional charges to the consumer will not be added to any advertised cost per kilowatt hour or per therm, and that the only unit of measurement that may be used in advertisements is cost per kilowatt hour or per therm, unless otherwise approved by the board. If an electric power supplier or gas supplier does not advertise using cost per kilowatt hour or per therm, the electric power supplier or gas supplier shall provide, at the consumer's request, an estimate of the cost per kilowatt hour or per therm. Any optional charges to the consumer shall be identified separately and denoted as optional.

(4) Credit standards shall include, at a minimum, that the credit requirements used to make offer decisions must be the same for all residential customers and that electric power suppliers, gas suppliers and private aggregators not impose unreasonable income or credit requirements.

(5) Billing standards shall include, at a minimum, provisions prohibiting electric public utilities, gas public utilities, electric power suppliers and gas suppliers from charging a fee to residential customers for either the commencement or termination of electric generation service or gas supply service.

b. (1) An electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell or transfer individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage and electric power payment history, to a third party without the written consent of the customer. Whenever such individual proprietary information is disclosed, sold or transferred, upon the written consent of the customer, it may be used only for the provision of continued electric generation service, electric related service, gas supply service or gas related service to that customer. In the case of a transfer or sale of a business, customer consent shall not be required for the transfer of customer proprietary information to the subsequent owner of the business for maintaining the continuation of such services.

(2) An electric power supplier, a gas supplier, a gas public utility or an electric public utility may use individual proprietary information that it has obtained by virtue of its provision of electric generation service, electric related service, gas supply service or gas related service to:

(a) Initiate, render, bill and collect for such services to the extent otherwise authorized to provide billing and collection services;

(b) Protect the rights or property of the electric power supplier, gas supplier or public utility; and

(c) Protect consumers of such services and other electric power suppliers, gas suppliers or electric and gas public utilities from fraudulent, abusive or unlawful use of, or subscription to, such services.

c. The board shall establish and maintain a database for the purpose of recording customer complaints concerning electric and gas public utilities, electric power suppliers, gas suppliers, private aggregators, and energy agents.

d. The board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall establish, or cause to be established, a multi-lingual electric and gas consumer education program. The goal of the consumer education program shall be to educate residential, small business, and special needs consumers about the implications for consumers of the restructuring of the electric power and gas industries. The consumer education program shall include, but need not be limited to, the dissemination of information to enable consumers to make informed choices among available electricity and gas services and suppliers, notification of residential electric and gas customers of the right to submit their names to the board pursuant to paragraph (1) of subsection e. of this section, and the communication to consumers of the consumer protection provisions of this act.

The board shall ensure the neutrality of the content and message of advertisements and materials.

The board shall promulgate standards for the recovery of consumer education program costs from customers which include reasonable measures and criteria to judge the success of the program in enhancing customer understanding of retail choice.

e. (1) Residential electric or gas customers may submit their names in writing to the board for inclusion on a list established by the board of customers not wanting to receive telephone solicitations by electric power suppliers, gas suppliers or private aggregators.

(2) As a condition of licensing, pursuant to standards adopted by the board, an electric power supplier, gas supplier or private aggregator shall not engage in telephone solicitation of any residential electric or gas customer, as appropriate, whose name is on the list established by the board, pursuant to paragraph (1) of this subsection.

3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as follows:

C.48:3-86 "Slamming" prevention; penalties.

37. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim standards for electric power suppliers or gas suppliers, within 90 days of February 9, 1999, to prevent and establish penalties for unauthorized changes of a consumer's electric power supplier or gas supplier, a practice commonly known as "slamming." Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

b. Standards for the prohibition of unauthorized changes in a customer's electric power supplier or gas supplier shall include:

(1) An electric power supplier, an electric public utility, a gas supplier or a gas public utility shall not cause an unauthorized change in a customer's electric power supplier or gas supplier, a practice known as "slamming." A change in a customer's electric power supplier or gas supplier shall be deemed to be unauthorized unless the customer has done so affirmatively and voluntarily and the supplier has obtained the customer's approval, which approval shall be evidenced by the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with paragraph (2) of this subsection, of a telephone call initiated by

an electric power supplier, electric public utility, gas supplier or gas public utility; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit;

(2) (a) A company performing independent, third-party verification shall: (i) be independent from the entity that seeks to provide the new service; (ii) not be directly or indirectly managed, controlled, directed or owned, wholly or in part, by the entity that seeks to provide the new service, or by any affiliate of that entity; (iii) operate from facilities physically separate from those of the entity that seeks to provide the new service; and (iv) not derive any commission or compensation based upon the number of sales confirmed;

(b) A company performing independent, third-party verification shall obtain a customer's oral confirmation regarding the change and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the customer upon request. Information obtained from a customer through confirmation shall not be used for marketing purposes;

(3) An electric power supplier, an electric public utility, a gas supplier or a gas public utility shall not fail to cause a change in a customer's electric power supplier or gas supplier, within a period of time determined to be appropriate by the board, when a supplier or utility is in receipt of a change order provided that such change order has been received in a manner that complies with federal and State rules and regulations, including as provided in this subsection;

(4) The acts of an agent of an electric power supplier, an electric public utility, a gas supplier or a gas public utility shall be considered the acts of the electric power supplier, electric public utility, gas supplier or gas public utility.

c. A customer's new electric power supplier, electric public utility, gas supplier or gas public utility shall notify the customer of the change in the customer's electric or gas supplier within 30 days in a manner to be determined by the board.

d. Bills to customers from an electric power supplier, electric public utility, gas supplier or gas public utility shall contain the name and telephone number of each supplier for whom billing is provided, and any other information deemed applicable by the board.

e. In addition to any other penalties, fines or remedies authorized by law, any electric power supplier, electric public utility, gas supplier or gas public utility that violates this section and collects charges for electric power supply or gas supply services from a customer or through an entity providing customer account services shall be liable to the electric power supplier, electric public utility, gas supplier or gas public utility previously selected by the customer in an amount equal to all charges paid by the

customer after such violation in accordance with such procedures as the board may prescribe. Any electric power supplier, electric public utility, gas supplier or gas public utility that violates this section shall also be liable for a civil penalty pursuant to section 34 of P.L.1999, c.23 (C.48:3-83); and the board is hereby authorized to revoke the license of any entity that violates this section.

4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read as follows:

C.48:3-90 Registration of private aggregator.

41. a. A private aggregator shall register with the board, which shall include the filing of basic information pertaining to the supplier, such as name, address, telephone number, and company background and profile. A private aggregator shall provide annual updates of this information to the board. The registration shall also include evidence of financial integrity, as determined by the board, and evidence that the private aggregator has knowledge of the energy industry.

b. Any residential customer that elects to purchase electric generation service or gas supply service, after the implementation of gas unbundling pursuant to section 10 of P.L.1999, c.23 (C.48:3-58), through a private aggregator must do so affirmatively and voluntarily, either through a written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by a private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, may permit.

5. This act shall take effect immediately.

Approved September 6, 2001.

CHAPTER 243

AN ACT creating six additional Superior Court judgeships and providing for the support of additional court staff and substance abuse treatment, amending N.J.S.2B:2-1 and making various appropriations.

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

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

Number of judges.

2B:2-1. Number of Judges. a. The Superior Court shall consist of 434 judges.

b. (1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were resident of each county:

Atlantic	11
Bergen	28
Burlington	10
Camden	16
Cape May	4
Cumberland	7
Essex	34
Gloucester	11
Hudson	24
Hunterdon	3
Mercer	9
Middlesex	24
Monmouth	18
Morris	16
Ocean	15
Passaic	17
Salem	3
Somerset	6
Sussex	4
Union	20
Warren	3

(2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4
Camden	8
Cape May	2
Cumberland	4
Essex	14
Gloucester	6
Hudson	6

Hunterdon	2
Mercer	6
Middlesex	8
Monmouth	4
Morris	6
Ocean	8
Passaic	6
Salem	2
Somerset	4
Sussex	2
Union	6
Warren	2

2. There is appropriated to the Administrative Office of the Courts from the General Fund \$972,000 for costs associated with the additional judgeships created by this act.

3. There is appropriated to the Administrative Office of the Courts from the General Fund \$1,458,000 for staff associated with the operation of the drug courts.

4. There is appropriated to the Department of Health and Senior Services, Division of Addiction Services from the General Fund \$1,570,000 for in-patient and out-patient substance abuse treatment for adult and juvenile criminal offenders.

5. Sections 1, 2 and 3 of this act shall take effect January 1, 2002 and section 4 of this act shall take effect April 1, 2002.

Approved September 6, 2001.

CHAPTER 244

AN ACT concerning the use of child passenger restraint systems, booster seats, and seat belts, amending P.L.1983, c.128 and P.L.1984, c.179 and repealing section 2 of P.L.1983, c.128.

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

1. Section 1 of P.L.1983, c.128 (C.39:3-76.2a) is amended to read as follows:

C.39:3-76.2a Child passenger restraint system; booster seat, use; failure to use not contributory negligence; inadmissibility in evidence.

1. Every person operating a motor vehicle, other than a school bus, equipped with safety belts who is transporting a child under the age of eight years and weighing less than 80 pounds on roadways, streets or highways of this State, shall secure the child in a child passenger restraint system or booster seat, as described in Federal Motor Vehicle Safety Standard Number 213, in a rear seat. If there are no rear seats, the child shall be secured in a child passenger restraint system or booster seat, as described in Federal Motor Vehicle Safety Standard Number 213 . In no event shall failure to wear a child passenger restraint system or to use a booster seat be considered as contributory negligence, nor shall the failure to wear the child passenger restraint system be admissible as evidence in the trial of any civil action.

2. Section 2 of P.L.1984, c.179 (C.39:3-76.2f) is amended to read as follows:

C.39:3-76.2f Seat belt usage requirements for persons ages 8-18; driver's responsibility.

2. a. Except as provided in P.L.1983, c.128 (C.39:3-76.2a et al.) for children under eight years of age and weighing less than 80 pounds, all passengers under eight years of age and weighing more than 80 pounds, and all passengers who are at least eight years of age but less than 18 years of age, and each driver and front seat passenger of a passenger automobile operated on a street or highway in this State shall wear a properly adjusted and fastened safety seat belt system as defined by Federal Motor Vehicle Safety Standard Number 209.

b. The driver of a passenger automobile shall secure or cause to be secured in a properly adjusted and fastened safety seat belt system, as defined by Federal Motor Vehicle Safety Standard Number 209, any passenger who is at least eight years of age but less than 18 years of age.

For the purposes of the "Passenger Automobile Seat Belt Usage Act," the term "passenger automobile" shall include vans, pick-up trucks and utility vehicles.

Repealer.

3. Section 2 of P.L.1983, c.128 (C.39:3-76.2b) is repealed.

4. This act shall take effect on the first day of the third month after enactment.

Approved September 6, 2001.

CHAPTER 245

AN ACT concerning elections, amending various parts of statutory law, supplementing Title 19 of the Revised Statutes, and making an appropriation.

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

1. R.S.19:2-1 is amended to read as follows:

Primary for delegates and alternates to national conventions and for general and special elections.

19:2-1. Primary elections for delegates and alternates to national conventions of political parties and for the general election shall be held in each year on the Tuesday next after the first Monday in June, between the hours of 6:00 A.M. and 8:00 P.M., Standard Time. Primary elections for special elections shall be held not earlier than 30 nor later than 20 days prior to the special elections.

2. R.S.19:6-25 is amended to read as follows:

Sitting on general election days required.

19:6-25. The county boards in each of the counties shall sit on the day of the general election at the office of the county boards between the hours of 5:00 A.M. and midnight.

3. R.S.19:15-2 is amended to read as follows:

Operation hours of polls; members present.

19:15-2. The district boards shall open the polls for such election at 6:00 A.M. and close them at 8:00 P.M., and shall keep them open during the whole day of election between these hours; except that for a school election the polls shall be open between the hours of 5:00 P.M. and 9:00 P.M. and during any additional time which the school board may designate between the hours of 7:00 A.M. and 9:00 P.M.

The board may allow one member thereof at a time to be absent from the polling place and room for a period not exceeding one hour between the hours of 1:00 P.M. and 5:00 P.M. or for such shorter time as it shall see fit.

At no time from the opening of the polls to the completion of the canvass shall there be less than a majority of the board present in the polling room or place, except that during a school election there shall always be at least one member of each district election board present or if more than two district board members are designated to serve at the polling place, at least two members present.

4. R.S.19:23-40 is amended to read as follows:

Time and place of holding.

19:23-40. The primary election for the general election shall be held for all political parties upon the Tuesday next after the first Monday in June between the hours of 6:00 A.M. and 8:00 P.M., Standard Time. It shall be held for all political parties in the same places as hereinbefore provided for the ensuing general election.

5. Section 23 of P.L.1953, c.211 (C.19:57-23) is amended to read as follows:

C.19:57-23 Marking and handling of absentee ballots by voters; return by mail or personal delivery; record.

23. Any absentee voter shall be entitled to mark any absentee ballot, so forwarded to him, for voting at any election by indicating his choice of candidates for the offices named, and as to public questions, if any, stated thereon, in accordance with the election laws of this State, except that in such ballots to be voted in any primary election for the general election his choice shall be limited to the candidates of his political party or to any person or persons whose names are written thereon by him. When so marked, such ballot shall be placed in said inner envelope, which shall then be sealed, and the voter shall then fill in the form of certificate attached to said inner envelope, at the end of which he shall sign and print his name in his own handwriting. The inner envelope with the certificate shall then be placed in said outer envelope, which shall then be sealed.

No absentee voter shall permit any person in any way, except as provided hereafter, to unseal, mark or inspect his ballot, interfere with the secrecy of his absentee ballot vote, complete or sign the certificate, or seal the inner or outer envelope, nor shall any person do so.

An absentee voter shall be entitled to assistance from a family member in performing any of the actions above. An incapacitated absentee voter shall also be entitled to assistance from a person other than a family member in performing any of such actions. The family member or other person providing such assistance shall certify that he did assist the voter and will maintain the secrecy of the vote by both printing and signing his name in the space provided on the certificate. In no event may a candidate for election provide such assistance, nor may any person, at the time of providing such assistance, campaign or electioneer on behalf of any candidate.

Said sealed outer envelope with the inner envelope and the ballot enclosed therein shall then either be mailed with sufficient postage to the county board of elections to which it is addressed or delivered personally by the voter or a bearer designated by him to such board or its designee. Such

ballot must be received by such board or its designee before the time designated by R.S.19:15-2 or R.S.19:23-40 for the closing of the polls, as may be appropriate on the day of an election.

At the time any person delivers a ballot to the county board, he shall sign a record which the county shall maintain of all absentee ballots personally delivered to it.

C.19:45-6.2 Reimbursement to county from State for certain costs.

6. In accordance with the provisions of Art.VIII, Sec.II, par.5 of the Constitution, upon application for reimbursement by a county governing body to the Attorney General and approval of the application by the Director of the Division of Budget and Accounting, a county shall be reimbursed by the State for:

a. compensation to each member of the district board of elections who shall have served at the general election, the primary election, and any nonpartisan municipal, special, or recall election, and who shall have qualified for and been paid \$200 for such service in accordance with R.S.19:45-6, the sum of \$125; and

b. any additional costs incurred by the county as a result of the provisions of this act, P.L.2001, c.245.

7. The Attorney General shall prepare a report to the Governor and the Legislature recommending steps that can be taken to assist county boards of elections in attracting and retaining district board members. In preparing the report, the Attorney General shall solicit the views of county boards of elections, county superintendents of elections, and district board members in this State, and shall study what is being done in other states to attract and retain district board members. The Attorney General shall submit the report to the Governor and the Legislature within six months after the effective date of this act, P.L.2001, c.245.

8. There is appropriated from the General Fund to the Department of Law and Public Safety the sum of \$3,000,000, together with such additional sums as the Director of the Division of Budget and Accounting may certify to be necessary to effectuate the purposes of this act, P.L.2001, c.245.

9. R.S.19:45-6 is amended to read as follows:

Members of district boards; compensation.

19:45-6. The compensation of each member of the district boards for all services performed by them under the provisions of this Title shall be as follows:

In all counties, for all services rendered including the counting of the votes, and in counties wherein voting machines are used, the tabulation of the votes registered on the voting machines, and the delivery of the returns, registry binders, ballot boxes and keys for the voting machines to the proper election officials, \$200 each time the primary election, the general election or any special election is held under this Title; provided, however, that:

a. (1) The member of the board charged with the duty of obtaining and signing for the signature copy registers shall receive an additional \$12.50 per election, such remuneration being limited to only one board member per election, or \$6.25 to each of two board members if they share such responsibility for the signature copy registers, and (2) the member of the board charged with the duty of returning the signature copy registers shall receive an additional \$12.50 per election, such remuneration being limited to only one board member per election, or \$6.25 to each of two board members if they share such responsibility for the signature copy registers;

b. In the case of any member of the board who is required under R.S.19:50-1 to attend in a given year a training program for district board members, but who fails to attend such a training program in that year, that compensation shall be \$50.00 for each of those elections;

c. In counties wherein voting machines are used no compensation shall be paid for any services rendered at any special election held at the same time as any primary or general election. Such compensation shall be in lieu of all other fees and payments; and

d. Compensation for district board members serving at a school election shall be paid by the board of education of the school district conducting the election at an hourly rate of \$5.77, except that the board of education may compensate such district board members at a pro-rated hourly rate consistent with the daily rate up to a maximum of \$14.29. The provisions of subsections a., b., and c. of this section shall also apply to district board members serving at a school election, except that in the case of subsection b., the compensation shall be at an hourly rate of \$3.85.

Compensation due each member shall be paid within 30 days but not within 20 days after each election; provided, however, that no compensation shall be paid to any member of any such district board who may have been removed from office or application for the removal of whom is pending under the provisions of R.S.19:6-4.

10. This act shall take effect immediately

Approved September 6, 2001.

CHAPTER 246

AN ACT concerning domestic security preparedness, establishing a domestic security preparedness planning group and task force and making an appropriation therefor.

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

C.App.A:9-64 Short title.

1. This act shall be known and may be cited as the "New Jersey Domestic Security Preparedness Act."

C.App.A:9-65 Findings, declarations relative to domestic security preparedness.

2. The Legislature finds and declares:

a. The events of September 11, 2001 have refocused attention on the importance of domestic preparedness for any terrorist attack, and the utility of maintaining a select task force, comprised of representatives of State government, local emergency management and law enforcement officials, the Federal Emergency Management Agency, the Federal Bureau of Investigation, and relief organizations, for developing a coordinated plan of action to prepare for, respond to, and recover from, incidents of terrorism;

b. Because the targets of terrorist activities may not be limited to the public sector, the State also must review the preparedness of the private sector to ensure its readiness and to foster cooperation and coordination between the public and private sectors in assessing risks and developing and implementing preparedness, response and recovery strategies; and

c. It is, therefore, altogether fitting and proper, and within the public interest, to reinforce and expand the State's existing anti-terrorism efforts by integrating and enhancing intelligence gathering and preparedness efforts throughout State and local government and the private sector in New Jersey by establishing a New Jersey Domestic Security Preparedness Task Force in, but not of, the Department of Law and Public Safety, in order to maximize, enhance and effectuate coordination of the disaster preparedness and recovery resources provided through the Office of Emergency Management in the Division of State Police, the New Jersey National Guard and county and local emergency management organizations.

C.App.A:9-66 Definitions relative to domestic security preparedness.

3. For the purposes of this act:

"Planning group" means the Domestic Security Preparedness Planning Group established pursuant to section 8 of this act.

"Task force" means the Domestic Security Preparedness Task Force created pursuant to section 4 of this act.

C.App.A:9-67 Domestic Security Preparedness Task Force.

4. a. There is established in, but not of, the Department of Law and Public Safety the Domestic Security Preparedness Task Force, which shall provide Statewide coordination and supervision of all activities related to domestic preparedness for a terrorist attack. The task force shall be composed of nine members: the Superintendent of State Police or his designee, the Attorney General or his designee, the Adjutant General of Military and Veterans' Affairs or his designee, the Commissioner of Transportation or his designee, the Commissioner of Health and Senior Services or his designee, the Coordinator of the Office of Recovery and Victim Assistance, all of whom shall serve ex officio, and three public members appointed by the Governor, with the advice and consent of the Senate. One of the public members shall have, by education or expertise, experience in chemical or biological agents that may be used in acts of terrorism. The public members shall serve for terms of three years and shall be subject to such security screening as may be necessary or appropriate. Of the public members first appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and one shall be appointed for a term of three years. The Governor shall appoint a chairperson from among the members of the task force, who shall serve in that position at the pleasure of the Governor. The chairperson shall act as the State's liaison with the federal Homeland Security Council. In the event the Governor shall appoint a public member as chairperson, that appointee shall be accorded cabinet status for the purposes of effectuating the purposes of this act. The task force shall adopt a plan of operation for the carrying out of its duties, which shall be approved by the Governor in accordance with the provisions of section 5 of this act.

b. The task force may appoint, in accordance with its plan of operation, such personnel, including attorneys, professionals in the field of terrorism and terrorism preparedness, disaster response, mitigation and recovery, and such other special consultants and experts as may be deemed necessary to carry out its duties under this act, as well as such clerical and other personnel as may be appropriate and necessary. All employees appointed pursuant to this section shall be in the unclassified service of the civil service of the State and shall be deemed confidential employees for the purposes of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.).

C.App.A:9-68 Duties of task force.

5. The primary duties of the task force shall include, but not be limited to:

a. The development of proposals to preserve, protect and sustain domestic security and to ensure a comprehensive program of domestic preparedness. The task force shall formulate proposals for operational plans relative to domestic security, using inter-agency expertise, coordination and resource planning to meet and address the need to prevent terrorist attacks, to mitigate their impact, and to prepare and plan for the various responses required in the event of a terrorist attack. In carrying out this function, the task force shall identify and assess potential risks to the domestic security and well-being of New Jersey's citizens, including risks to, and disruptions of, essential State and local infrastructures, transportation networks, public and private telecommunications and information networks, financial systems and networks, the delivery and availability of essential health care services, and the potential impact of terroristic chemical, biological and nuclear attacks or sabotage.

b. The development, implementation and management of comprehensive responses to any terrorist attack or any other technological disaster and the effective administration, management and coordination of remediation and recovery actions and responses following any such attack or disaster. In this regard, the task force shall be charged with managing responses in accordance with the State Emergency Operations Plan and serve as an all-hazards response center. The disaster remediation, recovery and response functions performed by the task force shall supplement those disaster relief functions currently performed by the Office of Emergency Management in the Division of State Police, which shall continue in its current capacity, subject to the direction and supervision of the Superintendent of State Police. The task force and Office of Emergency Management shall coordinate and consult with each other on the performance of their respective remediation, recovery and relief functions.

C.App.A:9-69 Adoption of standards, guidelines, protocols.

6. a. The task force shall adopt domestic security and preparedness standards, guidelines and protocols, subject to applicable constitutional and statutory limitations, to preserve, protect and sustain the critical assets of the State's infrastructure, which may be applicable to both public and private entities and facilities, as may be appropriate and critical to the public interest and well-being. In adopting such standards, guidelines and protocols, the task force shall not be bound by the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); however, no adoption shall take place without review by the Infrastructure Advisory

Committee established pursuant to section 7 of this act and approval by the Governor. The task force may issue and implement orders to effectuate those standards, guidelines and protocols for the purposes of this act.

b. The task force may draw on the assistance of any State, county, or municipal government, independent authority or other agency or instrumentality of the State for the purposes of carrying out its duties under this act.

c. Subject to applicable constitutional and statutory limitations, the task force may seek or request and, if necessary, compel the production of such information as it deems necessary to perform its duties under this act; provided, however, that any such information that is confidential in nature, including proprietary information, shall be deemed privileged and shall not be publicly disclosed by the task force unless directly relating to the security, public safety or well-being of the citizens of this State.

C.App.A:9-70 Infrastructure Advisory Committee.

7. The task force shall establish an Infrastructure Advisory Committee to assist it in fulfilling its obligations under this act. The advisory committee shall act as a liaison to private industry throughout the State and establish ongoing communication between private industry, and any other private entity, and State and local officials regarding domestic preparedness and the respective roles and responsibilities of the public and private sectors, and shall serve as a resource to the task force and the Domestic Security Preparedness Planning Group established in section 8 of this act with respect to domestic preparedness issues facing private industry and other private entities. The advisory committee shall include representatives of gas, water, electric and utilities, nuclear facilities, and the telecommunications, transportation, health care, chemical, and pharmaceutical industries situate in or otherwise serving the citizens of this State, as well as such other industries or entities the task force deems appropriate.

C.App.A:9-71 Domestic Security Preparedness Planning Group.

8. a. There is established in the Department of Law and Public Safety the Domestic Security Preparedness Planning Group, which shall assist the task force in performing its duties under this act. In cooperation with the task force, the planning group shall develop and provide to the task force, for consideration, a coordinated plan to be included in the State Emergency Operations Plan to prepare for, respond to, mitigate and recover from incidents of terrorism.

b. The members of the planning group shall include the Director of the New Jersey Office of Emergency Management, the Adjutant General of Military and Veterans' Affairs or his designee, the Commissioner of Agriculture or his designee, the Commissioner of Community Affairs or his designee, the Commissioner of Corrections or his designee, the Commis-

sioner of Environmental Protection or his designee, the Commissioner of Health and Senior Services or his designee, the Commissioner of Human Services, or his designee, the Commissioner of Transportation or his designee, the Executive Director of the New Jersey Transit Corporation or his designee, the State Treasurer or his designee, the New Jersey State Medical Examiner or his designee, a representative of the University of Medicine and Dentistry of New Jersey, the President of the Board of Public Utilities or his designee, a representative of the New Jersey County Emergency Management Coordinators Association, a representative of the New Jersey State Fire Chiefs Association, and a representative of the New Jersey State Police Chiefs Association. The planning group may include, to the extent such individuals may be made available for such purpose, a representative of the Federal Emergency Management Agency, a representative of the Federal Bureau of Investigation, a representative of the American Red Cross, and a representative of such other charitable groups as may be appropriate. The chairperson of the task force shall appoint the chair and vice chair of the planning group.

C.App.A:9-72 Duties of planning group.

9. a. It shall be the duty of the planning group to identify needs and resources; to explore and determine the availability of the resources available to meet those needs; to develop, coordinate and integrate proposals to afford guidance to the task force in carrying out its duties; to formulate recommendations for the development of necessary training programs; and to provide such technical assistance as may be appropriate and necessary for the task force to fulfill its duties under this act. To the extent that the planning group obtains critical or sensitive intelligence information, such information shall be confidential. The planning group, in consultation with the task force, shall obtain and maintain data on the security needs of State and local governments and shall serve as the central agency for submitting applications to the federal government for terrorism planning and equipment grants.

b. There shall be established within the planning group a Weapons of Mass Destruction Advisory Committee. For the purposes of this subsection, weapons of mass destruction shall include, but not be limited to, nuclear weapons and biological or chemical agents. The Adjutant General of Military and Veterans' Affairs, or his designee, shall chair the advisory committee. The committee shall investigate and assess the nature and extent of the risk associated with terroristic attack or sabotage involving such weapons and shall assist the planning group and task force in developing appropriate preparedness plans. In performing its duties, the advisory committee may call upon the expertise, special training, and

technological skill and capability of the New Jersey National Guard in the development, preparation, coordination and integration of the plans.

C.App.A:9-73 Noncompliance, action for relief.

10. Whenever it appears to the task force that a person knowingly has refused or failed to comply with applicable domestic security preparedness standards or furnish information required by this act, the Attorney General may institute an action or proceeding in the Superior Court for equitable and other relief, which the court shall order if necessary to preserve, protect or sustain the public safety or well-being. That relief may include assessment for the costs of any investigation, inspection, or monitoring and for the reasonable costs of preparing and litigating a case brought pursuant to this section. Any assessments imposed pursuant to this provisions of this section shall be deposited into the General Fund.

C.App.A:9-74 Records not deemed public; OPMA not applicable.

11. a. No record held, maintained or kept on file by the task force or the planning group shall be deemed to be a public record under the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning access to public records. The task force and the planning group shall designate such records as may be available for public inspection when, in the sole discretion of the entity possessing the record, the inspection of those records shall not jeopardize the public safety.

b. Cognizant of the public safety and well-being of the citizens of this State and their domestic security, neither the task force nor the planning group shall be subject to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

C.App.A:9-75 Program of laboratory services for detection, analysis of chemical, biological agents.

12. The Commissioner of Health and Senior Services shall establish or cause to be established a program of laboratory services for the prompt and accurate detection and analysis of biological and chemical agents that may be or have been used in the commission of terroristic acts or any other technological disaster. The program shall include the capacity to detect, analyze and identify chemical agents so used during and beyond the first 24 hours of a suspected event, and to support the safe handling of potentially dangerous environmental and clinical specimens so identified.

C.App.A:9-76 Annual report by task force to Legislature.

13. The task force shall issue a report annually to the Legislature, as provided herein, as to its activities during the preceding year. The report shall include, but not be limited to, an account of the general security measures that have been implemented during the preceding year, the public

and private entities that are affected by the work of the task force, and such other information as may be necessary or useful to the Legislature with respect to the task force's operations. The report shall be submitted to the President of the Senate, the Speaker of the General Assembly, the Minority Leader of the Senate, and the Minority Leader of the General Assembly, as well as the chairperson of the Senate Legislative Oversight Committee, or its successor, and the chairperson of the Assembly Regulatory Oversight Committee, or its successor. Such information as is presented in the report shall be deemed confidential.

14. a. There is appropriated from the General Fund to the Division of State Police in the Department of Law and Public Safety the sum of \$2,700,000 to support and expand the counter-terrorism unit established in the Division of State Police. Of the amount so appropriated, \$2,000,000 is allocated for operating costs, including personnel, and \$700,000 is allocated to fund the acquisition of equipment necessary for the purposes of this act.

b. There is appropriated from the General Fund to the Office of Emergency Management in the Division of State Police in the Department of Law and Public Safety the sum of \$1,000,000 to fund enhancement of the services provided by that office pursuant to this act.

c. There is appropriated from the General Fund to the Department of Military and Veterans' Affairs the sum of \$2,000,000 to support the training and equipping of domestic emergency response teams. Of the amount so appropriated, \$1,300,000 is allocated for operating costs including personnel, and \$700,000 is allocated to fund the acquisition of equipment necessary for the purposes of this act.

d. There is appropriated from the General Fund to the Department of Health and Senior Services the sum of \$1,800,000 to fund the program of laboratory services established in section 12 of P.L.2001, c.246 (C.App.A:9-75).

e. There is appropriated from the General Fund to the Department of Health and Senior Services the sum of \$1,450,000 to fund a program of disease surveillance and epidemiological investigation.

C.App.A:9-77 Effective date, continuance of task force.

15. This act shall take effect immediately; provided, however, that on the first day of the 65th month following enactment the Governor shall give notice to the Legislature to review the conduct and performance of the Domestic Security Preparedness Task Force. If the Legislature fails to adopt, by a two-thirds majority of each House, a joint resolution finding that the task force as formulated under this act has either failed to adequately perform its duties pursuant to this act or that the task force is no longer

necessary to preserve, protect and sustain the domestic security and preparedness and, therefore shall be dissolved, the task force shall continue.

Approved October 4, 2001.

CHAPTER 247

AN ACT concerning the presumption of death and amending N.J.S.3B:27-1 and N.J.S.3B:27-6 and supplementing P.L.1944, c.20 (C.52:17A-1 et seq.).

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

1. N.J.S.3B:27-1 is amended to read as follows:

Death of resident or nonresident presumed after 5 years' absence or exposure to specific catastrophic event.

3B:27-1. Death of resident or nonresident presumed after 5 years' absence or exposure to specific catastrophic event. a. A resident or nonresident of this State who absents himself from the place of his last known residence for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

b. A resident or nonresident of this State who is exposed to a specific event certified by the Governor as a catastrophic event that has resulted in a loss of life to persons known or unknown and whose absence following that event is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The death is presumed to have occurred at the time of the catastrophic event.

c. Nothing in this section shall be construed to limit or abrogate the special peril doctrine under the common law.

2. N.J.S.3B:27-6 is amended to read as follows:

Action to be brought in Superior Court.

3B:27-6. Action to be brought in Superior Court. a. The Superior Court may declare the absentee dead, if it is satisfied that the absentee should be presumed dead under the provisions of N.J.S.3B:27-1. Under the provisions of subsection a. of N.J.S.3B:27-1 the Superior Court may, if it

concludes from a review of the evidence, both direct and circumstantial, that the earlier death of the absentee has been established and that the death occurred prior to the institution of the proceeding before the court, fix the date of death earlier than the expiration of the 5-year period set forth therein. Under the provisions of subsection b. of N.J.S.3B:27-1 the death is presumed to have occurred at the time of the catastrophic event. A declaration with respect to a nonresident shall affect only property located within the State.

b. At the request of an applicant who has obtained a declaration based on subsection b. of N.J.S.3B:27-1 with respect to a resident of this State, the court shall order the State registrar of vital statistics to issue, at no cost to the applicant, a death certificate. The State registrar may indicate on such certificate that it was issued pursuant to court order in accordance with this section.

C.52:17B-4b Additional powers, duties of Attorney General concerning certain declarations of death.

3. In addition to the powers and duties conferred upon the Attorney General by the Constitution, the common and statutory law of this State, the Attorney General may initiate or intervene in any proceedings or action brought pursuant to N.J.S.3B:27-6, including a class action law suit, on behalf of citizens of this State to seek a declaration of death of an absentee under subsection b. of N.J.S.3B:27-1. The Attorney General may take all steps necessary or useful in carrying out the powers provided in this act.

4. This act shall take effect immediately and shall be retroactive to September 11, 2001.

Approved October 4, 2001.

CHAPTER 248

AN ACT concerning certain public benefits available to persons affected by the September 11, 2001 terrorist attack on the United States.

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 "New Jersey Terrorism Victims' Assistance Act of 2001."

2. a. Notwithstanding the provisions of any other law or rule or regulation to the contrary, in regard to any person who suffered personal

injury, death, loss of a family member, loss of or damage to real or personal property, or business interruption as a result of the September 11, 2001 terrorist attack on the United States, the Governor, upon the recommendation of a State agency, may:

waive any waiting period, any requirement of proof or documentation, or other administrative prerequisite, and approve the payment of benefits or the provision of assistance to such person or such person's representative under any State program to which the person has a lawful claim, including but not limited to temporary disability, workers' compensation, unemployment insurance, the State Health Benefits Program or any State-administered retirement system; and

extend, without interest or penalty, the time for the filing of any report, return, document, request for any hearing or appeal, including any hearing under Title 54 of the Revised Statutes, or the making of any payment with, or to, that State agency.

b. Whenever the Governor grants a waiver or extension upon the recommendation of a State agency pursuant to subsection a. of this section, that State agency shall provide interested persons with notice of the availability of the waiver or extension by publishing a detailed announcement in the New Jersey Register and on the State agency's website. A copy of the announcement shall be transmitted to the presiding officers of each house of the Legislature and the chairpersons of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee.

3. Notwithstanding the provisions of any other law or rule or regulation to the contrary, the governing body of a municipality by resolution may temporarily waive interest on any delinquent current property tax obligations or current municipal charges due on or before December 31, 2001 in regard to persons who suffered personal injury, death, loss of a family member, loss of or damage to real or personal property, or business interruption as a result of the terrorist attack on the United States on September 11, 2001.

4. This act shall take effect immediately and expire on December 31, 2001.

Approved October 4, 2001.

CHAPTER 249

AN ACT to enact the Emergency Management Assistance Compact and supplementing Title 38A of the New Jersey Statutes.

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

C.38A:20-4 Short title.

1. This act shall be known and may be cited as "The Emergency Management Assistance Compact Act."

C.38A:20-5 Emergency Management Assistance Compact.

2. The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state legally joining therein in the form substantially as follows:

Emergency Management Assistance Compact

The contracting states solemnly agree:

ARTICLE I PURPOSE

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency due to resource shortages, community disorders, insurgency, or enemy attack.

This compact also shall provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating the performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, when such actions occur outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and procedures to apply outside resources to make

a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this Compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III PARTY STATE RESPONSIBILITIES

1. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

a. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, resource shortages, civil disorders, insurgency, or enemy attack.

b. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

c. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

d. Assist in warning communities adjacent to or crossing the state boundaries.

e. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

f. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

g. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

2. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

a. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

b. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

c. The specific place and time for staging of the assisting party's response and a point of contact at that location.

3. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with its terms; except that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the

operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state or states, whichever is longer.

ARTICLE V LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI LIABILITY

Officers or employees of a party state rendering aid to another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may include, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; except that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and furthermore, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items.

Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support or repatriation of such evacuees.

ARTICLE XI IMPLEMENTATION

This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII VALIDITY

This act shall be construed to effectuate the purposes stated in Article I of this compact. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this act and its applicability to other persons and circumstances shall not be affected.

ARTICLE XIII ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would, in the absence of express statutory authorization, be prohibited under Section 1385 of Title 18 of the United States Code.

3. This act shall take effect immediately.

Approved October 4, 2001.

CHAPTER 250

AN ACT establishing kinship legal guardianship, supplementing Title 3B of the New Jersey Statutes and Title 30 of the Revised Statutes, amending N.J.S.2B:2-1 and making an appropriation.

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

C.3B:12A-1 Findings, declarations relative to kinship legal guardianship.

1. The Legislature finds and declares that:
 - a. There is an increase in the number of children who cannot reside with their parents due to the parents' incapacity or inability to perform the regular and expected functions of care and support of the child;
 - b. An increasing number of relatives, including grandparents, find themselves providing care on a long-term basis to these children without court approved legal guardianship status because the caregivers either are unable or unwilling to seek termination of the legal relationships between the birth parent and the child, particularly when it is the caregiver's own child or sibling who is the parent. In these cases, adoption of the child is neither feasible nor likely, and it is imperative that the State create an alternative, permanent legal arrangement for children and their caregivers. One such alternative arrangement, which does not require the termination of parental rights, is a court awarded kinship legal guardianship that is intended to be permanent and self-sustaining, as evidenced by the transfer to the caregiver of certain parental rights, but retains the birth parents' rights to consent to adoption, the obligation to pay child support, and the parents' right to have some ongoing contact with the child;
 - c. In considering kinship legal guardianship, the State is seeking to add another alternative, permanent placement option, beyond custody, without rising to the level of termination of parental rights, for caregivers in relationships where adoption is neither feasible nor likely; and
 - d. Therefore, it is in the public interest to create a new type of legal guardianship that addresses the needs of children and caregivers in long-term kinship relationships.

C.3B:12A-2 Definitions relative to kinship legal guardianship and court action.

2. As used in sections 1 through 6 of P.L.2001, c.250 (C.3B:12A-1 et seq.):

"Caregiver" means a person over 18 years of age, other than a child's parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months.

"Child" means a person under 18 years of age, except as otherwise provided in P.L.2001, c.250 (C.3B:12A-1 et al.).

"Commissioner" means the Commissioner of Human Services.

"Court" means the Superior Court, Chancery Division, Family Part.

"Department" means the Department of Human Services.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Family friend" means a person who is connected to a child or the child's parent by an established positive psychological or emotional relationship that is not a biological or legal relationship.

"Home review" means the basic review of the information provided by the petitioner and a visit to the petitioner's home where the child will continue to reside, in accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

"Kinship caregiver assessment" means a written report prepared in accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

"Kinship legal guardian" means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L.2001, c.250 (C.3B:12A-1 et al.). A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child's health, education and maintenance.

"Kinship relationship" means a family friend or a person with a biological or legal relationship with the child.

"Parental incapacity" means incapacity of such a serious nature as to demonstrate that the parent is unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child.

C.3B:12A-3 Jurisdiction, venue.

3. The Superior Court, Chancery Division, Family Part shall have jurisdiction under sections 1 through 6 of P.L.2001, c.250 (C.3B:12A-1 et seq.). Venue of a kinship legal guardianship action shall be determined in accordance with the applicable Rules of Court.

C.3B:12A-4 Rights, responsibilities, authority of kinship legal guardian.

4. a. (1) Except as provided in paragraph (2) of this subsection, a kinship legal guardian shall have the same rights, responsibilities and authority relating to the child as a birth parent, including, but not limited to: making decisions concerning the child's care and well-being; consenting to routine and emergency medical and mental health needs; arranging and consenting to educational plans for the child; applying for financial assistance and

social services for which the child is eligible; applying for a motor vehicle operator's license; applying for admission to college; responsibility for activities necessary to ensure the child's safety, permanency and well-being; and ensuring the maintenance and protection of the child.

(2) A kinship legal guardian may not consent to the adoption of the child or a name change for the child. The birth parent of the child shall retain the authority to consent to the adoption of the child or a name change for the child.

(3) The birth parent of the child shall retain the obligation to pay child support.

(4) The birth parent of the child shall retain the right to visitation or parenting time with the child, as determined by the court.

(5) The appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance.

(6) Kinship legal guardianship terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when kinship legal guardianship is otherwise terminated.

b. There shall be no filing fee charged for kinship legal guardianship complaints or motions in the court.

c. For the purposes of P.L.2001, c.250 (C.3B:12A-1 et al.), a kinship legal guardian shall have the same meaning as the term "legal guardian" as defined in 42 U.S.C. s. 675, except that the process, procedure and ruling for kinship legal guardianship shall be apart from, and shall not amend, supplant or contravene, the provisions of Chapter 12 of Title 3B of the New Jersey Statutes.

d. (1) The provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) shall not be construed to grant or confer upon any person appointed kinship legal guardian of a child any of the additional rights or privileges accorded to persons appointed guardian of a minor's person or estate by a Surrogate or the Superior Court, Chancery Division, Probate Part pursuant to the provisions of Chapter 12 of Title 3B of the New Jersey Statutes.

(2) The provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) shall not be construed to preclude an application to the court for guardianship of the person or estate of a minor by any person appointed kinship legal guardian of a child.

C.3B:12A-5 Appointment as kinship legal guardian; contents of petition.

5. a. Upon petition of a caregiver, the court may appoint the caregiver as kinship legal guardian of a child residing in the caregiver's home pursuant to the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.).

b. A petition for the appointment of a kinship legal guardian shall include a kinship caregiver assessment, which shall contain:

- (1) the full name and address of the person seeking to become the kinship legal guardian;
- (2) the circumstances of the kinship relationship;
- (3) the whereabouts of the child's parents, if known;
- (4) the nature of the parents' incapacitation, if known;
- (5) the wishes of the parents, if known;
- (6) the ability of the kinship caregiver family to assume permanent care of the child;
- (7) the child's property and assets, if known;
- (8) the wishes of the child, if appropriate;
- (9) any current involvement of a child with the division if the child has an open division case and is actively receiving services;
- (10) certification from the caregiver that the caregiver has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months;
- (11) the results from a criminal history record background check and a domestic violence central registry check of the caregiver and any adult residing in the caregiver's household conducted pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86);
- (12) the results from a child abuse record check arranged for and coordinated by the division pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86); and
- (13) the results of the caregiver's home review.

C.3B:12A-6 Considerations for appointment as kinship legal guardian.

6. a. In making its determination about whether to appoint the caregiver as kinship legal guardian, the court shall consider:

- (1) if proper notice was provided to the child's parents;
- (2) the best interests of the child;
- (3) the kinship caregiver assessment;
- (4) in cases in which the division is involved with the child as provided in subsection a. of section 8 of P.L.2001, c.250 (C.30:4C-85), the recommendation of the division, including any parenting time or visitation restrictions;
- (5) the potential kinship legal guardian's ability to provide a safe and permanent home for the child;
- (6) the wishes of the child's parents, if known to the court;
- (7) the wishes of the child if the child is 12 years of age or older, unless unique circumstances exist that make the child's age irrelevant;

(8) the suitability of the kinship caregiver and the caregiver's family to raise the child;

(9) the ability of the kinship caregiver to assume full legal responsibility for the child;

(10) the commitment of the kinship caregiver and the caregiver's family to raise the child to adulthood;

(11) the results from the child abuse record check conducted pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86); and

(12) the results from the criminal history record background check and domestic violence check conducted pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86). In any case in which the caregiver petitioning for kinship legal guardianship, or any adult residing in the prospective caregiver's home, has a record of criminal history or a record of being subjected to a final domestic violence restraining order under P.L.1991, c.261 (C.2C:25-17 et seq.), the court shall review the record with respect to the type and date of the criminal offense or the provisions and date of the final domestic violence restraining order and make a determination as to the suitability of the person to become a kinship legal guardian. For the purposes of this paragraph, with respect to criminal history, the court shall consider convictions for offenses specified in subsections c., d. and e. of section 1 of P.L.1985, c.396 (C.30:4C-26.8).

b. The court shall not award kinship legal guardianship of the child unless proper notice was served upon the parents of the child and any other party to whom the court has awarded custody or parenting time for that child, in accordance with the Rules of Court.

c. The court shall not award kinship legal guardianship of the child solely because of parental incapacity.

d. The court shall appoint the caregiver as a kinship legal guardian if, based upon clear and convincing evidence, the court finds that:

(1) each parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child;

(2) the parents' inability to perform those functions is unlikely to change in the foreseeable future;

(3) in cases in which the division is involved with the child as provided in subsection a. of section 8 of P.L.2001, c.250 (C.30:4C-85), (a) the division exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; and (b) adoption of the child is neither feasible nor likely; and

(4) awarding kinship legal guardianship is in the child's best interests.

e. The court order appointing the kinship legal guardian shall specify, as appropriate, that:

(1) a kinship legal guardian shall have the same rights, responsibilities and authority relating to the child as a birth parent, including, but not limited to: making decisions concerning the child's care and well-being; consenting to routine and emergency medical and mental health needs; arranging and consenting to educational plans for the child; applying for financial assistance and social services for which the child is eligible; applying for a motor vehicle operator's license; applying for admission to college; responsibility for activities necessary to ensure the child's safety, permanency and well-being; and ensuring the maintenance and protection of the child; except that a kinship legal guardian may not consent to the adoption of the child or a name change for the child;

(2) the birth parent of the child retains the authority to consent to the adoption of the child or a name change for the child;

(3) the birth parent of the child retains the obligation to pay child support;

(4) the birth parent of the child retains the right to visitation or parenting time with the child, as determined by the court;

(5) the appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance; and

(6) kinship legal guardianship terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when kinship legal guardianship is otherwise terminated.

f. An order or judgment awarding kinship legal guardianship may be vacated by the court prior to the child's 18th birthday if the court finds that the kinship legal guardianship is no longer in the best interests of the child or, based upon clear and convincing evidence, the court finds that the parental incapacity or inability to care for the child that led to the original award of kinship legal guardianship is no longer the case and termination of kinship legal guardianship is in the child's best interests.

In cases in which the division was involved, when determining whether a child should be returned to a parent, the court may refer a parent for an assessment prepared by the division, in accordance with regulations adopted by the commissioner.

g. An order or judgment awarding kinship legal guardianship may be vacated by the court if, based upon clear and convincing evidence, the court finds that the guardian failed or is unable, unavailable or unwilling to provide proper care and custody of the child, or that the guardianship is no longer in the child's best interests.

C.30:4C-84 Definitions relative to kinship legal guardianship and State agency action.

7. As used in sections 7 through 10 of P.L.2001, c.250 (C.30:4C-84 et seq.):

"Caregiver" means a person over 18 years of age, other than a child's parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months.

"Child" means a person under 18 years of age, except as otherwise provided in P.L.2001, c.250 (C.3B:12A-1 et al.).

"Commissioner" means the Commissioner of Human Services.

"Court" means the Superior Court, Chancery Division, Family Part.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Kinship caregiver assessment" means a written report prepared in accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

"Kinship legal guardian" means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L.2001, c.250 (C.3B:12A-1 et al.). A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child's health, education and maintenance.

"Kinship relationship" means a family friend or a person with a biological or legal relationship with the child.

C.30:4C-85 Conduct of kinship caregiver assessment in certain cases.

8. a. In the case of a child who has been removed from his home by the division within the last 12 months, or for whom the division has an open or currently active case and where legal representation is currently being provided by the Office of the Public Defender either through its Law Guardian Program or Parental Representation Unit:

(1) The kinship caregiver assessment required pursuant to section 5 of P.L.2001, c.250 (C.3B:12A-5) shall be conducted by the division, at no cost to the caregiver.

(2) An indigent parent and child shall be afforded the same right to legal counsel and representation as in actions under P.L.1974, c.119 (C.9:6-8.21 et seq.) and section 54 of P.L.1999, c.53 (C.30:4C-15.4).

(3) In cases where the child has been placed in the caregiver's home by the division and the child has resided in the caregiver's home for at least the last 12 consecutive months, the caregiver shall obtain the consent of the division in order to petition the court for the appointment of the caregiver as kinship legal guardian of the child. The appointment of a kinship legal

guardian for a child shall be considered by the court as the permanent placement for the child.

b. In all cases other than those specified in subsection a. of this section:

(1) The kinship caregiver assessment required pursuant to section 5 of P.L.2001, c.250 (C.3B:12A-5) shall be conducted by an agency in accordance with regulations adopted by the commissioner.

(2) The costs for the kinship caregiver assessment shall be borne by the department in cases where a financially eligible individual is applying for cash assistance under a kinship care program or pilot program provided by the department, for which kinship legal guardianship is a requirement for receiving such assistance. For all other cases under this subsection, the caregiver shall be responsible for all of the costs of the kinship caregiver assessment.

C.30:4C-86 Checks required prior to submission of petition.

9. a. Prior to the submission of a petition for appointment as a kinship legal guardian, the caregiver and any adult residing in the caregiver's household shall undergo:

(1) a criminal history record background check, which shall be conducted by the Division of State Police in the Department of Law and Public Safety and shall include an examination of its own files and the obtaining of a similar examination by the Federal Bureau of Investigation; and

(2) a domestic violence central registry check, which shall be conducted by the Division of State Police. The Division of State Police shall provide a report on all incidents of domestic violence perpetrated by the caregiver and any adult in the caregiver's household.

The Division of State Police shall provide the results of the criminal history background and central registry checks to the commissioner or his designee.

b. Prior to the submission of a petition for appointment as a kinship legal guardian, the division shall arrange for and coordinate a division child abuse registry record check. The division shall report the results of the registry check directly to the court.

C.30:4C-87 Kinship legal guardianship as alternative disposition.

10. With respect to a complaint initiated by the division pursuant to P.L.1974, c.119 (C.9:6-8.21 et seq.) and section 15 of P.L.1951, c.138 (C.30:4C-15):

a. Only the division or the court shall have legal standing to seek a kinship legal guardianship arrangement as an alternative disposition. The parents of the child who is the subject of the complaint may request, with appropriate notice to the division, that the court consider a kinship legal

guardianship arrangement as an alternative disposition. If the division agrees to a kinship legal guardianship arrangement as an alternative disposition, the division shall not be required to file a new petition, but may amend the pending complaint in accordance with the Rules of Court.

b. If the court appoints a kinship legal guardian as an alternative disposition, the court shall consider such an appointment as the final disposition of the complaint.

C.30:4C-88 Rules, regulations.

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

C.3B:12A-7 Court rules.

12. The Supreme Court of New Jersey may adopt court rules to effectuate the purposes of this act.

13. N.J.S.2B:2-1 is amended to read as follows:

Number of judges.

2B:2-1. Number of Judges.

a. The Superior Court shall consist of 441 judges.

b. (1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were resident of each county:

Atlantic	11
Bergen	28
Burlington	10
Camden	16
Cape May	4
Cumberland.	7
Essex	34
Gloucester	11
Hudson	24
Hunterdon	3
Mercer	9
Middlesex	24
Monmouth	18
Morris	16
Ocean	15
Passaic	17
Salem	3
Somerset	6

Sussex	4
Union	20
Warren	3

(2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4
Camden	8
Cape May	2
Cumberland	4
Essex	14
Gloucester	6
Hudson	6
Hunterdon	2
Mercer	6
Middlesex	8
Monmouth	4
Morris	6
Ocean	8
Passaic	6
Salem	2
Somerset	4
Sussex	2
Union	6
Warren	2

14. a. There is appropriated to the Administrative Office of the Courts from the General Fund \$464,000 for costs associated with the additional judgeships created by this act.

b. There is appropriated to the Administrative Office of the Courts from the General Fund \$1,401,000 for staff associated with the operation of the additional judgeships created by this act.

c. There is appropriated to the Office of the Public Defender from the General Fund \$872,716 for costs associated with implementation of the kinship legal guardianship program.

15. This act shall take effect January 1, 2002, except that sections 13 and 14 shall take effect December 1, 2001

Approved October 11, 2001.

CHAPTER 251

AN ACT concerning income qualification limits for the homestead property tax reimbursement program and amending P.L.1997, c.348.

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

1. Section 1 of P.L.1997, c.348 (C.54:4-8.67) is amended to read as follows:

C.54:4-8.67 Definitions relative to homestead property tax reimbursement.

1. As used in this act:

"Base year" means, in the case of a person who is an eligible claimant on or before December 31, 1997, the tax year 1997; and in the case of a person who first becomes an eligible claimant after December 31, 1997, the tax year in which the person first becomes an eligible claimant.

"Commissioner" means the Commissioner of Health and Senior Services.

"Director" means the Director of the Division of Taxation.

"Condominium" means the form of real property ownership provided for under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

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

"Disabled person" means an individual receiving monetary payments pursuant to Title II of the federal Social Security Act (42 U.S.C.s.401 et seq.) on December 31, 1998, or on December 31 in all or any part of the year for which a homestead property tax reimbursement under this act is claimed.

"Dwelling house" means any residential property assessed as real property which consists of not more than four units, of which not more than one may be used for commercial purposes, but shall not include a unit in a condominium, cooperative, horizontal property regime or mutual housing corporation.

"Eligible claimant" means a person who:

is 65 or more years of age, or who is a disabled person;

is an owner of a homestead, or the lessee of a site in a mobile home park on which site the applicant owns a manufactured or mobile home;

has an annual income of less than \$17,918 in tax year 1998, less than \$18,151 in tax year 1999, or less than \$37,174 in tax year 2000, if single, or,

if married, whose annual income combined with that of the spouse is less than \$21,970 in tax year 1998, less than \$22,256 in tax year 1999, or less than \$45,582 in tax year 2000, which income eligibility limits for single and married persons shall be subject to adjustments in subsequent tax years pursuant to section 9 of P.L. 1997, c.348 (C.54:4-8.68);

as a renter or homeowner, has made a long-term contribution to the fabric, social structure and finances of one or more communities in this State, as demonstrated through the payment of property taxes directly, or through rent, on any homestead or rental unit used as a principal residence in this State for at least 10 consecutive years at least three of which as owner of the homestead for which a homestead property tax reimbursement is sought prior to the date that an application for a homestead property tax reimbursement is filed.

"Homestead" means:

a dwelling house and the land on which that dwelling house is located which constitutes the place of the eligible claimant's domicile and is owned and used by the eligible claimant as the eligible claimant's principal residence;

a site in a mobile home park equipped for the installation of manufactured or mobile homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured or mobile home for the installation thereof and such site is used by the eligible claimant as the eligible claimant's principal residence;

a dwelling house situated on land owned by a person other than the eligible claimant which constitutes the place of the eligible claimant's domicile and is owned and used by the eligible claimant as the eligible claimant's principal residence;

a condominium unit or a unit in a horizontal property regime or a continuing care retirement community which constitutes the place of the eligible claimant's domicile and is owned and used by the eligible claimant as the eligible claimant's principal residence.

In addition to the generally accepted meaning of "owned" or "ownership," a homestead shall be deemed to be owned by a person if that person is a tenant for life or a tenant under a lease for 99 years or more, is entitled to and actually takes possession of the homestead under an executory contract for the sale thereof or under an agreement with a lending institution which holds title as security for a loan, or is a resident of a continuing care retirement community pursuant to a contract for continuing care for the life of that person which requires the resident to bear, separately from any other charges, the proportionate share of property taxes attributable to the unit that the resident occupies;

a unit in a cooperative or mutual housing corporation which constitutes the place of domicile of a residential shareholder or lessee therein, or of a lessee or shareholder who is not a residential shareholder therein, which is used by the eligible claimant as the eligible claimant's principal residence.

"Homestead property tax reimbursement" means payment of the difference between the amount of property tax or site fee constituting property tax due and paid in any year on any homestead, exclusive of improvements not included in the assessment on the real property for the base year, and the amount of property tax or site fee constituting property tax due and paid in the base year, when the amount paid in the base year is the lower amount; but such calculations shall be reduced by any current year property tax reductions or reductions in site fees constituting property taxes resulting from judgments entered by county boards of taxation or the State Tax Court.

"Horizontal property regime" means the form of real property ownership provided for under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.).

"Manufactured home" or "mobile home" means a unit of housing which:

(1) Consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site;

(2) Is built on a permanent chassis;

(3) Is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and

(4) Is manufactured in accordance with the standards promulgated for a manufactured home by the Secretary of the United States Department of Housing and Urban Development pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," Pub.L.93-383 (42 U.S.C.s.5401 et seq.) and the standards promulgated for a manufactured or mobile home by the commissioner pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Mobile home park" means a parcel of land, or two or more parcels of land, containing no fewer than 10 sites equipped for the installation of manufactured or mobile homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured or mobile home for the installation thereof, and where the owner or owners provide services, which are provided by the municipality in which the park is located for property owners outside the park, which services may include but shall not be limited to:

(1) The construction and maintenance of streets;

(2) Lighting of streets and other common areas;

- (3) Garbage removal;
- (4) Snow removal; and
- (5) Provisions for the drainage of surface water from home sites and common areas.

"Mutual housing corporation" means a corporation not-for-profit, incorporated under the laws of this State on a mutual or cooperative basis within the scope of section 607 of the Langham Act (National Defense Housing), Pub.L.849, (42 U.S.C.s.1521 et seq.), as amended, which acquired a National Defense Housing Project pursuant to that act.

"Income" means income as determined pursuant to P.L.1975, c.194 (C:30:4D-20 et seq.).

"Principal residence" means a homestead actually and continually occupied by an eligible claimant as his or her permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the claimant, and other secondary real property holdings.

"Property tax" means the general property tax due and paid as set forth in this section, on a homestead, but does not include special assessments and interest and penalties for delinquent taxes.

"Site fee constituting property tax" means 18 percent of the annual site fee paid or payable to the owner of a mobile home park.

"Tax year" means the calendar year in which a homestead is assessed and the property tax is levied thereon and it means the calendar year in which income is received or accrued.

2. This act shall take effect immediately and apply retroactively to base year determinations for tax year 2000 and thereafter

Approved October 30, 2001.

CHAPTER 252

AN ACT concerning the Division of Youth and Family Services, supplementing Title 30 of the Revised Statutes and making an appropriation.

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

C.30:4C-3.1 "Review Panel" established.

1. There is hereby established in, but not of, the Department of Human Services the Division of Youth and Family Services Staffing and Outcome Review Panel ("Review Panel").

C.30:4C-3.2 Membership of Review Panel.

2. The Review Panel shall consist of nineteen (19) members as follows:

- a. The Commissioner of Human Services, or a designee, shall serve ex-officio.
- b. The Commissioner of Personnel, or a designee, shall serve ex-officio.
- c. The State Treasurer, or a designee, shall serve ex-officio.
- d. The Attorney General, or a designee, shall serve ex-officio.
- e. The Public Defender, or a designee, shall serve ex-officio.
- f. The Director of the Administrative Office of the Courts, or a designee, shall serve ex-officio.
- g. A representative of the Office of the Governor.
- h. Two members of the Senate to be appointed by the President of the Senate who shall each be of different political parties and who shall serve during the legislative session in which the appointment is made, one of whom shall be the Chairman of the Senate Women's Issues, Children and Family Services Committee. A member may be appointed for any number of successive terms.
- i. Two members of the General Assembly to be appointed by the Speaker of the General Assembly who shall each be of different political parties and who shall serve during the legislative session in which the appointment is made, one of whom shall be the Chairman of the Assembly Senior Issues and Community Services Committee. A member may be appointed for any number of successive terms.
- j. Eight public members shall be directly appointed by the Governor as follows:
 - (1) three public members who are representatives from employee organizations, two of whom are representatives of the Communications Workers of America;
 - (2) a public member who is a representative of the Association for Children of New Jersey;
 - (3) a public member who is a representative of Legal Services of New Jersey;
 - (4) a public member who is a representative of a contracted service provider to the Division of Youth and Family Services; and
 - (5) two public members, one of whom is a foster parent and one of whom is an adoptive parent.

C.30:4C-3.3 Terms, voting rights, vacancies.

3. Public members shall serve for terms of three years, and along with ex-officio members, shall have full voting rights. Vacancies in the

membership of the Review Panel shall be filled in the same manner provided for the original appointments. The public members of the Review Panel 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 Review Panel for its purpose.

C.30:4C-3.4 Organization of Review Panel.

4. The Review Panel shall organize as soon as practicable but no later than 60 days following the appointment of its members. The Governor shall appoint a chairman and vice-chairman from among the members.

C.30:4C-3.5 Meetings, availability of services.

5. The Review Panel may meet at the call of its chairman and at the times and in the places it may deem appropriate and necessary to fulfill its charge. The Review Panel shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. The Department of Human Services shall provide staff services to the Review Panel.

C.30:4C-3.6 Duties of Review Panel.

6. a. The Review Panel shall review the staffing levels of the Division of Youth and Family Services in the Department of Human Services in order to develop recommendations regarding staffing levels and the most effective methods of recruiting, hiring and retaining staff within the Division of Youth and Family Services. In addition, the panel shall review the division's performance in the achievement of management and client outcomes.

b. The Review Panel shall present a preliminary report of its findings and recommendations to the Governor and the Legislature prior to January 1, 2002, and subsequent reports annually thereafter with the first full report due no later than July 1, 2002.

7. The Department of the Treasury is directed to allocate a minimum of 124 additional positions to the Division of Youth and Family Services for fiscal year 2002.

8. The Commissioners of the Department of Human Services and the Department of Personnel and the State Treasurer are directed to review and make recommendations for the Division of Youth and Family Services for the following personnel and compensation issues:

a. minimum starting salary of \$35,000 for entry level Family Services Specialists for fiscal year 2002;

- b. title reevaluations for certain Division of Youth and Family Services direct care positions;
- c. retention and hiring bonus programs, or both, for certain DYFS direct care positions;
- d. career opportunities for DYFS direct care staff; and
- e. title series for clerical staff, with objectives of consolidating and upgrading those titles and establishing bridge titles for DYFS clerical staff that bridges into the professional or paraprofessional job titles.

9. This act shall take effect immediately.

Approved October 31, 2001.

CHAPTER 253

AN ACT concerning certain retired members of the Public Employees' Retirement System of New Jersey and amending P.L.1966, c.217.

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

1. Section 27 of P.L.1966, c.217 (C.43:15A-57.2) is amended to read as follows:

C.43:15A-57.2 Reemployment of retired former member.

27. a. Except as provided in subsection b. of this section, if a former member of the State Employees' Retirement System or the retirement system, who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be re-enrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of re-enrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former membership shall be paid if his death shall occur during the period of such re-enrollment.

Upon subsequent retirement of such member, his former retirement allowance shall be reinstated together with any optional selection, based on his former membership. In addition, he shall receive an additional

retirement allowance based on his subsequent service as a member computed in accordance with applicable provisions of chapter 84 of the laws of 1954; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his final compensation than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement, but shall not be less than the death benefit that was applicable to his former retirement.

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed again by: (1) an employer in a position for which the compensation does not exceed \$10,000 per year; or (2) if the compensation exceeds \$10,000 per year, by an employer that is a public institution of higher education as defined in N.J.S.18A:62-1 in a teaching staff position. The Director of the Division of Pensions and Benefits may from time to time adjust the amount in paragraph (1) of this subsection. This adjustment shall be $\frac{3}{5}$ of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the director.

2. This act shall take effect immediately.

Approved November 15, 2001.

CHAPTER 254

AN ACT concerning penalties for violations of certain civil rights and amending P.L.1983, c.412.

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

1. Section 2 of P.L.1983, c.412 (C.10:5-14.1a) is amended to read as follows:

C.10:5-14.1a Penalties; disposition.

2. Any person who violates any of the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), shall, in addition to any other relief or affirmative action provided by law, be liable for the following penalties:

- a. In an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior violation within the five-year period ending on the date of the filing of this charge;
- b. In an amount not exceeding \$25,000 if the respondent has been adjudged to have committed one other violation within the five-year period ending on the date of the filing of this charge; and
- c. In an amount not exceeding \$50,000 if the respondent has been adjudged to have committed two or more violations within the seven-year period ending on the date of the filing of this charge. The penalties shall be determined by the director in such amounts as he deems proper under the circumstances and included in his order following his finding of an unlawful discrimination or an unlawful employment practice pursuant to section 16 of P.L.1945, c.169 (C.10:5-17). Any such amounts collected by the director shall be paid forthwith into the State Treasury for the general purposes of the State.

2. This act shall take effect immediately.

Approved November 15, 2001.

CHAPTER 255

AN ACT concerning the membership of the New Jersey Tourism Advisory Council and amending P.L.1977, c.225.

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

1. Section 7 of P.L.1977, c.225 (C.34:1A-51) is amended to read as follows:

C.34:1A-51 New Jersey Tourism Advisory Council.

7. a. There is created in the division the New Jersey Tourism Advisory Council which shall consist of 19 members:

(1) Two members of the Senate, to be appointed by the President thereof, not more than one of whom shall be of the same political party, and two members of the General Assembly, to be appointed by the Speaker thereof, not more than one of whom shall be of the same political party;

(2) Fourteen public members, not more than seven of whom shall be of the same political party, who shall be appointed by the Governor with the advice and consent of the Senate, one of whom shall be designated as chairman by the Governor for the term of the member's appointment, and 13 of whom shall be chosen from persons who by experience or training

represent the areas of the tourist industry cited in subparagraphs (a) through (m) of this paragraph:

- (a) One representative of the lodging sector;
- (b) One representative of the food service sector;
- (c) One representative of the transportation sector;
- (d) One representative of a regional tourism council;
- (e) One representative of the convention and visitor bureaus sector;
- (f) One representative of the tour/receptive services sector;
- (g) One representative of the outdoor recreation sector;
- (h) One representative of the historical and cultural arts sector;
- (i) One representative of the entertainment or amusement sector;
- (j) One representative of the financial community;
- (k) One representative of the marketing/research sector;
- (l) One representative of the eco-tourism sector; and
- (m) One representative of a Statewide travel and tourism association representing the various sectors of the tourism industry; and

(3) The director, who shall be a nonvoting member of the council.

b. The members of the council shall be appointed to three-year terms, except that of the initial appointments, the chairman and each representative of the transportation, tour/receptive services, the financial community, and marketing and research interests shall be appointed to a three-year term, each representative of the lodging, food service, convention and visitors bureaus, and entertainment interests shall be appointed to a two-year term, and each representative of the regional tourism councils, outdoor recreation, and historical and cultural arts interests shall be appointed to a one-year term. Members shall serve until their successors are appointed and qualified. Vacancies occurring other than by expiration of term shall be filled for the unexpired term only.

c. (Deleted by amendment, P.L.1991, c.280).

d. (Deleted by amendment, P.L.1991, c.280).

e. The members of the council shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as members.

f. (Deleted by amendment, P.L.1991, c.280).

g. The council shall meet at the call of the chairman and not less than four times a year.

2. This act shall take effect immediately.

Approved November 15, 2001.

CHAPTER 256

AN ACT removing the requirement that a public utility employee's Social Security number appear on the employee's identification badge and amending P.L.1977, c.35.

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

1. Section 2 of P.L.1977, c. 35 (C.48:3-43) is amended to read as follows:

C.48:3-43 Size, form of badge.

2. The identification badge shall not be larger than 2" x 4" and shall be made in such a way and of such material that any attempt to alter said badge will result in it being immediately, permanently and obviously ruined. The card shall be in the following form:

Color Photograph of Employee's Face in a size adequate to permit recognition	Employee's Name Date of Issuance
Validation	Employee's Signature Public Utility's Name

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

Approved November 15, 2001.

CHAPTER 257

AN ACT concerning the effective date of the Federal census of 2000 and supplementing chapter 4 of Title 52 of the Revised Statutes.

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

C.52:4-5 Effective date of Federal census of 2000.

1. Notwithstanding the provisions of any law to the contrary, the Federal census of 2000 shall become effective on January 1, 2002. This act

shall not determine the effective date of the census for the purposes of reapportionment or redistricting following the promulgation of the 2000 Federal census, or for the purpose of the distribution of financial aid by the State to any of its political subdivisions.

2. This act shall take effect immediately.

Approved November 15, 2001.

CHAPTER 258

AN ACT concerning transportation finance and amending P.L.1984, c.73.

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

1. Section 9 of P.L.1984, c.73 (C.27:1B-9) is amended to read as follows:

C.27:1B-9 Issuance of bonds.

9. a. The authority shall have the power and is hereby authorized after November 15, 1984 and from time to time thereafter to issue its bonds, notes or other obligations in principal amounts as in the opinion of the authority shall be necessary to provide 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, obligations or interest to be funded or refunded have or have not become due; and to provide for the security thereof and for the establishment or increase of reserves to secure or to pay the bonds, notes or other obligations or interest thereon and all other reserves and all costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers; and in addition to its bonds, notes and other obligations, the authority shall have the power to issue subordinated indebtedness, which shall be subordinate in lien to the lien of any or all of its bonds or notes. No resolution or other action of the authority providing for the issuance of bonds, refunding bonds, notes, or other obligations shall be adopted or otherwise made effective by the authority without the prior approval in writing of the Governor and the State Treasurer.

b. Except as may be otherwise expressly provided in the 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 provide the security and payment provisions for its bonds or notes as it may determine, including (without limiting the generality of the foregoing) bonds or notes as to which the principal and interest are payable from and secured by all or any portion of the revenues of and payments to the authority, and other moneys or funds as the authority shall determine. In addition, the authority may, in anticipation of the issuance of the bonds or the receipt of appropriations, grants, reimbursements or other funds, including without limitation grants from the federal government for federal aid highways or public transportation systems, issue notes, the principal of or interest on which, or both, shall be payable out of the proceeds of notes, bonds or other obligations of the authority or appropriations, grants, reimbursements or other funds or revenues of the authority. The authority may also enter into bank loan agreements, lines of credit and other security agreements as authorized pursuant to subsection h. of section 6 of P.L.1984, c.73 (C.27:1B-6) and obtain for or on its behalf letters of credit in each case for the purpose of securing its bonds, notes or other obligations or to provide direct payment of any costs which the authority is authorized to pay by this act and to secure repayment of any borrowings under the loan agreement, line of credit, letter of credit or other security agreement by its bonds, notes or other obligations or the proceeds thereof or by any or all of the revenues of and payments to the authority or by any appropriation, grant or reimbursement to be received by the authority and other moneys or funds as the authority shall determine.

c. Whether or not the bonds and notes are of the form and character as to be negotiable instruments under the terms of Title 12A, Commercial Transactions, New Jersey Statutes, the bonds and notes are hereby made negotiable instruments within the meaning of and for all the purposes of said Title 12A.

d. Bonds or notes of the authority shall be authorized by a resolution or resolutions of the authority and may be issued in one or more series and shall bear the date, or dates, mature at the time or times, bear interest at the rate or rates of interest per annum, be in the denomination or denominations, be in the form, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be payable from the sources, in the medium of payment, at the place or places within or without the State, and be subject to the terms of redemption (with or without premium) as the resolution or resolutions may provide. Bonds or notes may be further secured by a trust indenture between the authority and a corporate trustee within or without the State. All other obligations of the authority shall be

authorized by resolution containing terms and conditions as the authority shall determine.

e. Bonds, notes or other obligations of the authority may be sold at public or private sale at a price or prices and in a manner as the authority shall determine, either on a negotiated or on a competitive basis. Every bond, or refunding bond, issued on or after the effective date of P.L. 1995, c. 108 (C.27:1B-25.1 et al.) shall mature and be paid no later than 21 years from the date of the issuance of that bond or refunding bond.

f. Bonds or notes may be issued and other obligations incurred under the provisions of the act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by subsection a. of this section, 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 the act.

g. Bonds, notes and other obligations of the authority issued or incurred under the provisions of the act shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the authority and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision or be or constitute a pledge of the faith and credit of the State or of any political subdivision but all bonds, notes and obligations, unless funded or refunded by bonds, notes or other obligations of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in the act. Each bond, note or other obligation shall contain on its face a statement to the effect that the authority is obligated to pay the principal thereof or the interest thereon only from revenues or funds of the authority 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 or the interest on the bonds, notes or other obligations. For the purposes of this subsection, political subdivision does not include the authority.

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

i. The authority shall minimize debt incurrence by first relying on appropriations and other revenues available to the authority before incurring debt to meet its statutory purposes. Commencing on the 90th day following the date of enactment of this 1995 amendatory and supplementary act, the

authority shall not incur debt in any fiscal year in excess of \$650,000,000, except that if that permitted amount of debt, or any portion thereof, is not incurred in a fiscal year it may be incurred in a subsequent fiscal year. Any increase in this limitation shall only occur if so provided for by law. In computing the foregoing limitation as to the amount of debt the authority may incur, the authority may exclude any bonds, notes or other obligations, including subordinated obligations of the authority, issued for refunding purposes.

j. Upon the decision by the authority to issue refunding bonds pursuant to this section, and prior to the sale of those bonds, the authority shall transmit to the Joint Budget Oversight Committee, 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 authority relied when making the decision to issue refunding bonds. The report shall also disclose the intent of the authority to issue and sell the refunding bonds at public or private sale and the reasons therefor.

k. The Joint Budget Oversight Committee, or its successor, shall have authority to approve or disapprove the sale of refunding bonds as included in each report submitted in accordance with subsection j. of this section. The committee shall approve or disapprove the sale of refunding bonds within 10 business days after physical receipt of the report. The committee shall notify the authority in writing of the approval or disapproval as expeditiously as possible.

l. No refunding bonds shall be issued unless the report has been submitted to and approved by the Joint Budget Oversight Committee, or its successor, as set forth in subsection k. of this section.

m. Within 30 days after the sale of the refunding bonds, the authority shall notify the Joint Budget Oversight Committee, or its successor, of the result of that sale, including the prices and terms, conditions and regulations concerning the refunding bonds, and the actual amount of debt service savings to be realized as a result of the sale of refunding bonds.

n. The Joint Budget Oversight Committee, or its successor, shall, however, review all information and reports submitted in accordance with this section and may, on its own initiative, make observations and recommendations to the authority or to the Legislature, or both, as it deems appropriate.

2. This act shall take effect immediately.

Approved November 30, 2001.

CHAPTER 259

AN ACT concerning retirement benefits for workers compensation judges and supplementing P.L.1954, c.84 (C.43:15A-1 et seq.).

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

C.43:15A-142 Definitions relative to retirement benefits for workers compensation judges.

1. As used in this act, P.L.2001, c.259 (C.43:15A-142 et seq.):

"Aggregate public service" includes service as a workers compensation judge and in an office, position, or employment of this State or of a county, municipality, board of education, or public agency of this State.

"Beneficiary" means any person entitled to receive any benefit pursuant to the provisions of this act by reason of the death of a member or retirant.

"Child" means a deceased member's or retirant's unmarried child who is (a) under the age of 18; (b) of any age who, at the time of the member's or retirant's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment, and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board; or (c) under the age of 21 and is attending school full time.

"Final salary" means the annual salary received by the member at the time of retirement or death.

"Retirant" means any former member receiving a pension or retirement allowance as provided by this act.

"Widow" means the woman to whom a member was married at least four years before the date of his death and to whom he continued to be married until the date of his death. The eligibility of a widow to receive a survivor's benefit shall be considered terminated by the marriage of the widow subsequent to the member's or the retirant's death. In the event of accidental death, the four-year qualification shall be waived. When used in this act, the term "widow" shall mean and include "widower" as may be necessary and appropriate to the particular situation.

"Widower" means the man to whom a member was married at least four years before the date of her death and to whom she continued to be married until the date of her death. The eligibility of a widower to receive a survivor's benefit shall be considered terminated by the marriage of the widower subsequent to the member's or the retirant's death. In the event of accidental death, the four-year qualification shall be waived.

"Workers compensation judges" means the Chief Judges, administrative supervisory judges, supervisory judges and judges of compensation of the Division of Workers' Compensation of the Department of Labor.

C.43:15A-143 Membership in Workers Compensation Judges Part.

2. Notwithstanding the provisions of any other law, workers compensation judges shall be members of the Workers Compensation Judges Part, established pursuant to this act, P.L.2001, c.259 (C.43:15A-142 et seq.), of the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), and shall be subject to the same membership and benefit provisions as State employees, except as provided by P.L.2001, c.259. Membership in the retirement system shall be a condition of employment for service as a judge of compensation.

C.43:15A-144 Separate accounts, contributions.

3. a. Notwithstanding the provisions of section 25 of P.L.1954, c.84 (C.43:15A-25) to the contrary, a separate account shall be established in the annuity savings fund for each workers compensation judge and all contributions based on the judge's salary shall be credited to this account. This account shall be separate from any other account that the member may have as a result of other public service covered by the retirement system.

b. A workers compensation judge shall contribute at a rate equal to 5% of the judge's salary, which contribution shall be deducted from the salary at the time or times it is paid, and which shall be exclusive of any other contribution required of the member for Social Security, contributory death benefits or deductions for any other purpose.

c. A workers compensation judge who is enrolled on the basis of other public service before, during, or after service as a judge of compensation shall contribute for such other service at the rate of contribution required of other members as provided by section 25.

C.43:15A-145 Date of retirement; continued service permitted, certain circumstances.

4. a. Any workers compensation judge who has reached the age of 70 years shall be retired forthwith on the first day of the next calendar month. Any other eligible workers compensation judge may be retired on the first day of the next calendar month subsequent to the filing of a written and duly executed application with the retirement system. Such application shall be accompanied by a copy of the member's resignation which has been filed in the office of the Director of the Division of Workers' Compensation.

b. Notwithstanding the provisions of subsection a. of this section or any other law to the contrary, a workers compensation judge who is 60 years of age or older on the effective date of P.L.1999, c.380 shall be permitted to continue service as a judge until attaining 10 years of service credit under the Workers Compensation Judges Part of the retirement system.

C.43:15A-146 Conditions for receipt of retirement allowance of three-quarters of final salary.

5. Any workers compensation judge who has served at least 10 years as a judge of compensation and attained the age of 70 years shall be retired and shall receive the retirement allowance prescribed by this section.

Any workers compensation judge who has served at least 15 years as a judge of compensation and attained the age of 65 years, or served at least 20 years as a judge of compensation and attained the age of 60 years, may retire and receive the retirement allowance prescribed by this section. The retirement allowance shall consist of an annuity that shall be the actuarial equivalent of the member's accumulated deductions together with regular interest, and a pension that, when added to the member's annuity, shall provide a retirement allowance during the remainder of the member's life in the amount equal to three-quarters of the member's final salary.

C.43:15A-147 Conditions for receipt of one-half of final salary.

6. Any workers compensation judge who has:

a. served at least five years successively as a judge of compensation and attained the age of 65 years or more while serving in such office and has served at least 15 years of aggregate public service, or

b. served at least five years successively as a judge of compensation and attained the age of 60 years or more while serving in such office and has served at least 20 years of aggregate public service, may retire and receive the retirement allowance prescribed by this section. The retirement allowance shall consist of an annuity that shall be the actuarial equivalent of the member's accumulated deductions together with regular interest, and a pension that, when added to the member's annuity, shall provide a retirement allowance during the remainder of the member's life in an amount equal to one-half of the member's final salary.

C.43:15A-148 "Early" retirement; formula, conditions.

7. Any workers compensation judge who has served at least five years successively as a judge of compensation and at least 25 years of aggregate public service, and who resigns or is not reappointed before reaching age 60, may elect "early" retirement, provided, that such election is communicated by the member to the retirement system by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof the member desires to be retired. Any member of the retirement system, eligible to retire under the provisions of this section, shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of the member's accumulated deductions together with regular interest, and a pension which, when added to the member's annuity, shall provide a retirement allowance during the remainder of the member's life in the amount of 2% of the member's final salary multiplied by the number of

years of service up to 25 plus 1% of the member's final salary multiplied by the number of years of service over 25. Such retirement allowance shall be reduced in accordance with a table of actuarial equivalents recommended by the actuary and adopted by the retirement system reflecting all months that the member lacks of being age 60. The board of trustees shall retire the member at the time specified or at such other time within one month after the date so specified as the board finds advisable.

C.43:15A-149 Deferred retirement; formula, conditions.

8. Any workers compensation judge who has served at least five years successively as a judge of compensation and at least 10 years of aggregate public service, and who resigns or is not reappointed before reaching age 60, and not by removal for cause on charges of misconduct or delinquency, may elect to receive:

a. all of the member's accumulated deductions standing to the credit of the member's individual account in the annuity savings fund as provided under subsection a. of section 41 of P.L.1954, c.84 (C.43:15A-41), or

b. a deferred retirement allowance, beginning on the first day of the month following the member's attainment of age 60 and the filing of an application therefor, which shall consist of an annuity derived from the accumulated deductions standing to the credit of the member's account in the annuity savings fund at the time of severance from service together with regular interest, and a pension which, when added to the annuity, shall produce a retirement allowance in the amount of 2% of the member's final salary multiplied by the number of years of service up to 25 plus 1% of the member's final salary multiplied by the number of years of service over 25, provided that such inactive member may elect to receive payments provided under section 7 of this act, P.L.2001, c.259 (C.43:15A-148), if the member had qualified under that section at the time of leaving service, except that in order to avail the member of the option, the member shall exercise such option at least one month before the effective date of retirement.

If such inactive member shall die after attaining age 60 but before filing an application for retirement benefits pursuant to this section or section 7 of this act and for which benefits the member would have qualified, or in the event of death after retirement, there shall be paid to such member's beneficiary the death benefits prescribed by section 10 of this act.

No beneficiary shall be eligible for a pension or survivor's benefit if the member who elected to receive a deferred pension shall die before attaining age 60. Upon receipt of the proper proofs of death, the beneficiary of a member who elects to receive a deferred retirement allowance shall be paid the member's accumulated deductions at the time of death together with regular interest.

Any member who, having elected to receive a deferred pension or deferred retirement allowance, again becomes a member while under the age of 60, shall thereupon be reenrolled. The member shall be credited with all service as a member standing to the member's credit at the time of the member's election to receive a deferred pension or deferred retirement allowance.

C.43:15A-150 Benefits to survivors of judges on active service.

9. a. Upon the receipt of proper proofs of the death in active service of a workers compensation judge member of the retirement system, there shall be paid to the member's widow a survivor's benefit of 25% of final salary for the use of the widow, to continue during widowhood, plus 10% of final salary payable to one surviving child or plus 15% of final salary to two or more surviving children; if there is no surviving widow or in case the widow dies or remarries, 15% of final salary shall be payable to one surviving child, 20% of final salary to two surviving children in equal shares and if there are three or more children, 30% of final salary shall be payable to such children in equal shares. If there is no surviving widow or child, 20% of final salary shall be payable to one surviving parent or 30% of final salary shall be payable to two surviving parents in equal shares.

b. In addition to the benefits payable under subsection a. of this section, there shall also be paid in one sum to the member's beneficiary an amount equal to one and one-half times the final salary received by the member.

C.43:15A-151 Benefits to survivors of retired judges.

10. a. Upon the receipt of proper proofs of the death of a workers compensation judge who has retired on a pension or retirement allowance based on age and service, or pursuant to section 7 of this act, P.L.2001, c.259 (C.43:15A-148), there shall be paid to the member's beneficiary, an amount equal to one-fourth of the final salary received by the member.

b. Upon the receipt of proper proofs of the death of a member who has retired on a disability pension or retirement allowance, there shall be paid to the member's beneficiary, an amount equal to one and one-half times the final salary received by the member if such death occurs before the member shall have attained 60 years of age but if such death occurs thereafter, an amount equal to one-fourth of the final salary received by the member.

C.43:15A-152 Credit for previous service; purchase, conditions.

11. a. Any workers compensation judge who wishes to receive credit for previous service as a judge of compensation or in an office, position, or employment of this State or of a county, municipality, board of education, or public agency of this State, shall file an application therefor with the

board of trustees and pay into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to the judge's age at the time of purchase and the type of service to be purchased, to the member's salary at that time. Such purchase may be made in regular installments, equal to at least one-half the full normal contribution to the retirement system over a maximum period to be determined by the board of trustees.

In the case of any judge coming under the provisions of this section, full pension credit for the period of employment for which arrears are being paid shall be given upon the payment of at least one-half the total arrearage obligation and the completion of one year of membership and the making of such arrears payments, except that in the case of retirement, the total membership credit for such service shall be in direct proportion as the amount paid bears to the total amount of arrearage obligation.

b. The State shall pay to the retirement system the employer's accrued liability obligation on behalf of such judge purchasing prior service credit.

C.43:15A-153 Return of accumulated contributions; election of retirement allowance.

12. a. A workers compensation judge making contributions pursuant to the provisions of this act, P.L.2001, c.259 (C.43:15A-142 et seq.), and who is not eligible for any benefits under the Workers Compensation Judges Part, may, upon termination of such service as a judge of compensation, elect to receive the return of the judge's accumulated contributions in accordance with the provisions of subsection a. of section 41 of P.L.1954, c. 84 (C. 43:15A-41). If a workers compensation judge is a member of the retirement system on the basis of other public service, no application for a return of contributions shall be approved until the judge has terminated all service covered by the system and makes application for a return of all contributions made to the retirement system. If all or any part of a member's service as a workers compensation judge is applied toward qualifying for benefits under any other provision of P.L.1954, c.84 to which this act, P.L.2001, c.259 (C.43:15A-142 et seq.), is a supplement, no return of contributions made on the basis of the workers compensation judge salary shall be approved, and in that event, service established as a workers compensation judge and salary pertaining thereto shall be credited in the same manner as all other service and salary covered by the retirement system.

b. At the time of retirement, a member enrolled on the basis of service as a judge of compensation as well as other public service shall be permitted to elect the largest possible retirement allowance, if the member qualifies for benefits under both the provisions of this act and the act to which this is a supplement. An application for a return of contributions made on the basis

of such other public service not used for the calculation of a retirement allowance or to qualify for State payment for health care benefits in retirement may be approved.

c. A workers compensation judge electing to receive a retirement allowance under the Workers Compensation Judges Part shall be ineligible to receive a retirement allowance or pension for the same service under any other law of the State.

C.43:15A-154 Determination of unfunded accrued liability.

13. The actuary for the Public Employees' Retirement System shall determine the unfunded accrued liability for the Workers Compensation Judges Part of the retirement system and the benefits provided for workers compensation judges under that part in the same manner provided for the determination of the unfunded accrued liability of the retirement system by section 24 of P.L.1954, c.84 (C.43:15A-24). This unfunded accrued liability shall be amortized in the manner provided by section 24 over an amortization period of 30 years. Accrued liability and normal contributions for workers compensation judges shall be paid by transfers from the Second Injury Fund as provided by subsection j. of R.S.34:15-94. The Commissioner of Labor may, with the authorization of and appropriation by the Legislature, pay this unfunded accrued liability in a lump sum or over a period of time shorter than 30 years.

14. This act shall take effect immediately.

Approved December 6, 2001.

CHAPTER 260

AN ACT concerning employee leasing companies.

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

C.34:8-67 Definitions relative to employee leasing companies.

1. For the purposes of this act:

"Client company" means a sole proprietorship, partnership, corporation or other business entity, which enters into an employee leasing agreement and is assigned employees by the employee leasing company.

"Commissioner" means the Commissioner of Labor.

"Covered employee" means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement.

"Department" means the Department of Labor.

"Employee leasing agreement" or "professional employer agreement" means an arrangement, under written contract, whereby:

(1) An employee leasing company and a client company co-employ covered employees; and

(2) The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company's work force.

"Employee leasing company" or "professional employer organization" means a sole proprietorship, partnership, corporation or other business entity, which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities provided in section 2 of this act.

C.34:8-68 Provisions of leasing agreements.

2. a. Every employee leasing agreement shall provide that the employee leasing company:

(1) Reserves a right of direction and control over each covered employee assigned to the client company's location. However, a client company may retain sufficient direction and control over the covered employee as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory or statutory requirement of the client company;

(2) Assumes responsibility for the payment of wages to each covered employee without regard to payments by the client company to the employee leasing company, except that the provisions of this paragraph shall not affect the client company's obligations with respect to the payment of wages to covered employees;

(3) Assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on each covered employee;

(4) Retains authority to hire, terminate, discipline, and reassign each covered employee. However, no covered employee shall be reassigned to another client company without that covered employee's consent and the client company may have the right to accept or cancel the assignment of any covered employee;

(5) Has given written notice of the relationship between the employee leasing company and the client company to each covered employee it assigns to perform services at the client company's work site;

(6) Shall, except for newly established business entities, hire its initial employee complement from among employees of the client company at the time of execution of the employee leasing agreement at comparable terms and conditions of employment as are in existence at the client company at the time of execution of the employee leasing agreement and as designated by the client company. Throughout the term of the employee leasing agreement the covered employees shall be considered employees of the employee leasing company and the client company and upon the termination of the employee leasing agreement, the covered employees shall be considered employees of the client company;

(7) Continue to honor and abide by existing collective bargaining agreements applicable to covered employees. Upon expiration of the employee leasing agreement, the client company shall continue to honor and abide by all collective bargaining agreements applicable to covered employees. Every employee leasing company which enters into a contract with a client company, which has a collective bargaining representative for the covered employees, shall require that client company to enter into an agreement with the employee leasing company containing the following language:

"The client company shall continue to honor and abide by the terms of any applicable collective bargaining agreements, and upon expiration thereof, any obligations of the client company to bargain in good faith in connection with such collective bargaining agreements shall not be affected in any manner by the employee leasing agreement."

b. Every employee leasing agreement shall provide that the employee leasing company and the client company shall each retain a right of direction and control over management of safety, risk and hazard control at the work site or sites affecting each covered employee including:

(1) Responsibility for performing safety inspections of client company equipment and premises;

(2) Responsibility for the promulgation and administration of employment and safety policies; and

(3) Responsibility for the management of workers' compensation claims, the filings thereof, and procedures related thereto.

c. Nothing in this section or this act shall alter the rights or obligations of client companies, employee leasing companies or covered employees under the National Labor Relations Act, 29 U.S.C. s.151 et seq.

C.34:8-69 Relationship between leasing company, client company.

3. The employee leasing company and the client company shall not be owned or controlled by the same interests or be a part of a "controlled group of corporations" as that term is defined in section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563

C.34:8-70 Registration of leasing company.

4. a. An employee leasing company shall register with the commissioner and provide a list of its client companies, both upon the initial registration of the employee leasing company, and thereafter, annually by January 31st, listing all client companies as of the immediately preceding December 31st. The list shall include the following information with regard to each client company:

- (1) Client company's name;
- (2) Client company's physical location address;
- (3) Description of client company's economic activity;
- (4) Client company's state tax identification number;
- (5) Percent of client company's workforce being leased;
- (6) Effective date and duration of employee leasing agreement;
- (7) A copy of the standard form of agreement entered into between the employee leasing company and the client company;

(a) The standard form of agreement shall be accompanied by a certified list of all client companies contracting with the employee leasing company for its services.

(b) The employee leasing company shall be required to notify the Department of Labor on an annual basis of any changes in the standard form of agreement which relate to the requirements set forth in section 2 of this act, and when any particular client company has agreed to terms which deviate from the standard form of agreement;

(8) Proof of written disclosure to client companies upon the signing of an employee leasing agreement, as required in section 8 of this act;

(9) Proof of current workers' compensation coverage, which may be in the form of a letter from the insurance carrier, and which shall include the name of the carrier, date of commencement of coverage under the policy, term of the coverage, and verification of premiums paid; and

(10) Confirmation that all leased employees are covered by workers' compensation insurance.

b. Employee leasing companies shall also report to the department, on a quarterly basis, wage information regarding each covered employee as required by law, rule or regulation.

c. All records, reports and other information obtained from employee leasing companies under this act, except to the extent necessary for the

proper administration by the department of this act and all applicable labor laws, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

C.34:8-71 Registration, annual reporting.

5. a. Every initial registration and subsequent annual reporting shall be accompanied by a reviewed financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles within six months prior to the date of application or renewal, which statement shall show a minimum net worth of \$100,000.

b. (1) As a substitute for the requirement set forth in subsection a. of this section, the commissioner, or his designee, may require that the employee leasing company deposit in a depository designated by the commissioner a bond or securities with a market value of \$75,000. The securities so deposited shall include authorizations to the commissioner, or his designee, to sell those securities in an amount sufficient to pay any taxes, wages, benefits or other entitlement due a covered employee, if the employee leasing company does not make those payments when due.

(2) The commissioner, or his designee, may also require that bond or deposit if the commissioner finds that the leasing company has had its license or registration suspended, denied, or limited in any other jurisdiction; or that there have been instances in which the employee leasing company has not paid covered employees' wages or benefits when due, or failed to make timely payment of any federal or state payroll taxes or unemployment compensation contributions when due, or for other good cause.

(3) Any bond or securities deposited under this subsection shall not be included for the purpose of the calculation of net worth required by subsection a. of this section.

c. An employee leasing company shall submit to the commissioner, or his designee, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant that all applicable federal and state payroll taxes have been paid on a timely basis for that quarter. If the commissioner or his designee does not receive that certification within the 60-day period, the department shall notify the employee leasing company within five calendar days of the expiration of the 60-day period. If that certification is not received within 10 calendar days following the notification by the department, the department shall notify the client companies listed on the employee leasing company's annual report required pursuant to section 4 of this act that the certification was not received.

C.34:8-72 Co-employment of covered employees.

6. a. An employee leasing company registered under this act and the respective client companies with which it has entered into employee leasing agreements shall be the co-employers of their covered employees for the payment of wages and other employment benefits due, including the obligation under the workers' compensation law, R.S.34:15-1 et seq., to maintain insurance coverage for personal injuries to, or for the death of, those employees by accident arising out of and in the course of employment.

b. For purposes of this act, the agreement between the employee leasing company and the client company shall be one of co-employment, whereby the employee leasing company, having accepted the responsibilities set forth in section 2 of this act, may submit reports to the department and make contributions to the Unemployment Compensation and State Disability Benefits Funds in the manner prescribed in section 7 of the this act, on behalf of those covered employees covered by the employee leasing agreement. In addition, the provisions of R.S.34:15-8, regarding the exclusivity of the remedy under the workers' compensation law for personal injuries to, or for the death of, employees by accident arising out of and in the course of their employment, shall apply to the employee leasing company and the client company, and their employees.

c. The employee leasing company shall file reports prescribed under the "unemployment compensation law," R.S.43:21-1 et seq. on behalf of its covered employees using the State tax identification number of the employee leasing company.

C.34:8-73 Actions upon entry, dissolution of leasing agreement.

7. a. Upon entering into the employee leasing agreement:

(1) If the employee leasing company acquires the client company's total workforce, the employee leasing company shall report wages and pay contributions pursuant to the "unemployment compensation law," R.S.43:21-1 et seq., based on the benefit experience assigned to the employee leasing company under R.S.43:21-7. The benefit experience of the client company shall not be transferred to the leasing company and shall not be used in the calculation of the employee leasing company's future contribution rates.

(2) If the employee leasing company acquires less than all of the client company's total workforce, the employee leasing company shall report wages and pay contributions pursuant to the "unemployment compensation law," R.S.43:21-1 et seq. for that portion of the workforce acquired based on the benefit experience assigned to the employee leasing company under R.S.43:21-7. The benefit experience associated with that portion of the client company's workforce acquired by the employee leasing company

shall not be transferred to the employee leasing company and shall not be used in the calculation of the employee leasing company's future contribution rates. The client company shall continue to report wages and pay contributions for the workforce not acquired by the employee leasing company using the client company's contribution rate.

b. Upon dissolution of the employee leasing agreement:

(1) If, under the dissolved employee leasing agreement, the client company had leased its total workforce, and if, at the time of dissolution, the client company had leased those employees for at least two full calendar years, the client company shall be assigned the rate of a new employer under R.S.43:21-7 until it is eligible for a rate based on benefit experience pursuant to that section or enters into another employee leasing agreement.

(2) If, under the dissolved employee leasing agreement, the client company had leased its total workforce, and if, at the time of the dissolution, the client company had leased those employees for less than two full calendar years, the employee leasing company at the time of dissolution shall provide the Department of Labor with the data necessary to calculate the benefit experience of the client company for the duration of the employee leasing agreement. That benefit experience shall then be added to the client company's benefit experience which was established prior to entering the employee leasing agreement. Both the client company and the employee leasing company shall continue to use the rate of the employee leasing company for the period from the date of the dissolution of the employee leasing agreement until the following July 1.

(3) If, under the dissolved employee leasing agreement, the client company had leased less than its total workforce from the employee leasing company, and if, at the time of dissolution, the client company had leased those covered employees for at least two full calendar years, the benefit experience associated with that portion of the client company's workforce which had been leased from the employee leasing company shall not be transferred to the client company and shall not be used in the calculation of the client company's future contribution rates.

(4) If, under the dissolved employee leasing agreement, the client company had leased less than its total workforce from the employee leasing company, and if, at the time of dissolution, the client company had leased those covered employees for less than two full calendar years, the leasing company shall provide the department with the data necessary to calculate the benefit experience associated with that portion of the client's workforce which had been leased from the employee leasing company. The department shall combine that benefit experience with the client company's existing benefit experience. Both the client company and the employee

leasing company shall continue to use their own rates for the period from the date of the dissolution until the following July 1.

(5) If, immediately upon dissolution of the employee leasing agreement, the client company enters into a subsequent employee leasing agreement regarding those covered employees with another employee leasing company, the payroll relative to the client company shall be reported and paid at the rate assigned the second employee leasing company.

C.34:8-74 Calculation of unemployment benefit experience.

8. The employee leasing company shall provide to each client company, upon signing of an employee leasing agreement, written disclosure as to the method to be utilized for calculation of unemployment benefit experience contribution rates and temporary disability contribution rates upon both the inception and dissolution of the employee leasing relationship.

C.34:8-75 Inapplicability to temporary help service firms.

9. a. The provisions of this act shall not apply to temporary help service firms, as defined in section 1 of P.L. 1989, c.331 (C.34:8-43), or farm labor crew leaders who are subject to P.L.1971, c.192 (C.34:8A-7 et seq.).

b. Nothing in this act shall exempt either a client company or the covered employees leased to a client company from any applicable State, local, or federal licensing, registration or certification statutes and regulations.

c. Any covered employee who must be licensed, registered or certified, according to law, shall be treated as a covered employee of the client company for the purposes of the license, registration or certification.

d. The provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) shall remain applicable in all respects to those client companies of the employee leasing company who participate in public construction contracts as set forth in that act.

C.34:8-76 Noncompliance, rescinding of registration.

10. a. If an employee leasing company fails to comply with any of the requirements set forth in this act, the department may rescind the registration of that employee leasing company, thereby also rescinding the employee leasing company's co-employer status for purposes of the act, but not relieving the employee leasing company or client company from liabilities accrued.

b. If the department rescinds the registration of an employee leasing company, all client companies of the employee leasing company thereafter shall file reports and make contributions separately, as provided in R.S.43:21-1 et seq. The department shall calculate the respective unem-

ployment benefit experience contribution rates and temporary disability contribution rates of the employee leasing company and client company, thereafter, as set forth in subsection b. of section 7 of this act, and the exclusive remedy provision of R.S.34:15-8 shall, as of the date upon which the department has rescinded the registration of the employee leasing company, no longer apply to the employee leasing company relative to personal injuries to, or the death of, any employee formerly covered by the employee leasing agreement, by accident arising out of and in the course of employment, as otherwise provided in the workers' compensation law.

c. Notwithstanding any provisions of this act to the contrary, repeated and egregious violations by an employee leasing company of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et seq., the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or other applicable State or federal tax laws, the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), the laws concerning the regulation of child labor, Chapter 2 of Title 34 of the Revised Statutes, the "Construction Safety Act," P.L.1962, c.45 (C.34:5-166 et seq.), the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.), the "Worker Health and Safety Act," P.L.1965, c.154 (C.34:6A-1 et seq.), the laws concerning the regulation of employment agencies, including P.L.1989, c.331 (C.34:8-43 et seq.), the laws concerning suppliers of labor, including P.L.1971, c.192 (C.34:8A-7 et seq.), the Seasonal Farm Labor Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the "Construction Workers' Fringe Benefit Security Act," P.L.1987, c.150 (C.34:11A-1 et seq.), the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), the laws concerning the regulation of labor unions, including chapter 12 of Title 34 of the Revised Statutes, the laws concerning the regulation of labor disputes in general, including P.L.1960, c.193 (C.34:13C-1 et seq.), the workers' compensation law, chapter 15 of Title 34 of the Revised Statutes, the "Conscientious Employee Protection Act," P.L.1986, c.105 (C.34:19-1 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), the federal "Occupational Safety and Health Act," 29 U.S.C. s.651 et seq., the "Fair Labor Standards Act of 1938," 29 U.S.C. s.201 et seq., or the "National Labor Relations Act," 29 U.S.C. s.151 et seq., shall result in rescission of registration of an employee leasing company by the commissioner.

d. Whenever the department shall find cause to rescind the registration of an employee leasing company, it shall notify the registrant in writing of the reasons therefor, and provide the registrant with an opportunity for a

hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Whenever the department rescinds a registration, it shall simultaneously notify the client companies listed on the annual report required pursuant to section 4 of this act of that action.

C.34:8-77 Compliance with C.17:22A-1 et seq.

11. Nothing in this act shall exempt an employee leasing company or any employee thereof from compliance with the provisions of P.L.1987, c.293 (C.17:22A-1 et seq.) if its activities fall within the scope of that act or any regulation promulgated pursuant to that act.

C.34:8-78 Rules, regulations.

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

13. This act shall take effect immediately.

Approved December 6, 2001.

CHAPTER 261

AN ACT concerning the transportation of deer, amending R.S.23:4-47 and repealing P.L.1969, c.306.

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

1. R.S.23:4-47 is amended to read as follows:

Dead deer, tagging procedures, transportation; violations, penalties; rules, regulations.

23:4-47. A person who kills a deer in this State at any time during the legal seasons shall immediately attach thereto the deer transportation tag supplied with the hunting license and shall transport the deer to a deer checking station before 7:00 p.m. on the day the deer was killed, for registering the kill and having a legal possession tag affixed, which possession tag shall remain attached until the carcass has been consumed.

A person not required to purchase a hunting license under provisions of R.S.23:3-1, who kills a deer in this State at any time during the legal seasons, or a person who has lost the transportation tag supplied with the hunting license, shall make and attach a transportation tag immediately after

killing the animal, clearly stating the person's name and address, and if holding a license to hunt, the license number, with the date, township if known, and county in which the deer was killed and shall transport the deer to a checking station for registration as herein prescribed.

The division shall designate such checking stations as it deems necessary and shall prescribe regulations for their operation.

All deer killed during prescribed seasons shall be presented for registration at the nearest deer checking station by the person who killed the deer, and it shall be registered in that person's name. No person shall present a deer for registration, or permit to be registered in the person's name, any deer which the person did not kill. No person shall at any time in any manner transport any deer killed during a prescribed season, unless there is a legal tag securely attached to the deer. If the deer is being transported by a person other than the licensee, written permission signed by the licensee killing the deer must be in possession of the driver.

No person shall have in possession at any time any deer, or parts of a deer, which has not been legally registered. The owner of a legally registered deer may give away parts of the deer provided each separate part is plainly labeled with the name and address of the person who registered the deer, the possession tag number assigned to the deer, and the name and address of the person to whom it was given.

A person who fails to properly tag a deer and transport it to a checking station, or who borrows, loans, transfers, buys, sells or purloins any deer tag of another, shall be liable to the penalty prescribed by R.S.23:4-48.

The division shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement this section and to prescribe the tagging requirements for deer killed in a manner other than during a prescribed season.

Repealer.

2. P.L.1969, c.306 (C.23:4-47.1) is repealed.
3. This act shall take effect immediately.

Approved December 11, 2001.

CHAPTER 262

AN ACT establishing a Prepaid Higher Education Expense Program, amending and supplementing Title 18A of the New Jersey Statutes and making an appropriation.

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

C.18A:71B-64 Short title.

1. Sections 1 through 17 of this act shall be known and may be cited as the "New Jersey Prepaid Higher Education Expense Program Act of 2001."

C.18A:71B-65 Findings, declarations relative to Prepaid Higher Education Expense Program.

2. The Legislature finds and declares: that educational opportunity at the college and university level is a critical State interest which is linked to the needs of the State to ensure a well-educated work force; that educational opportunity is best ensured through the provision of institutions of higher education which are geographically and financially accessible; that it is in the best interests of this State to adopt and foster mechanisms which will encourage its citizens to engage in the timely financial planning which is necessary to guarantee that students will have the financial resources necessary to pursue a higher education given the annually escalating level of resources which such attendance requires; and that one such mechanism which has proven successful in some other states is the establishment of a program through which a portion of the costs associated with attendance at institutions of higher education may be paid in advance and fixed at a guaranteed level for the duration of undergraduate enrollment.

C.18A:71B-66 Definitions relative to Prepaid Higher Education Expense Program.

3. As used in sections 1 through 17 of this act:

"Advance payment contract" means a contract entered into by the board and a purchaser pursuant to the provisions of this act;

"Board" means the Prepaid Higher Education Expense Board established pursuant to section 6 of this act;

"Eligible independent institution of higher education" means those institutions of higher education incorporated and located in this State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey and whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529. "Eligible independent institution of higher education" shall include a proprietary institution if expenses for tuition at the institution

would be considered qualified higher education expenses under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree granting programs licensed or approved by the Commission on Higher Education or for other proprietary institutions as determined by the board. "Eligible independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion;

"Fund" means the Prepaid Higher Education Expense Trust Fund established pursuant to section 5 of this act;

"Institution of higher education" means an eligible educational institution as defined in or for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;

"Program" means the New Jersey Prepaid Higher Education Expense Program established pursuant to section 4 of this act;

"Public institution of higher education" means Rutgers, The State University, the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey Institute of Technology, the University of Medicine and Dentistry of New Jersey, the county colleges and any other public university or college now or hereafter established or authorized by State law. A public institution of higher education is an institution whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

"Purchaser" means a person who makes or is obligated to make payments in accordance with an advance payment contract;

"Qualified beneficiary" means: a. a resident of this State at the time a purchaser enters into an advance payment contract on behalf of the resident; or b. a nonresident who is the child of a noncustodial parent who is a resident of the State at the time that the noncustodial parent enters into an advance payment contract on behalf of the child;

"Tuition" means the charges imposed by an institution of higher education for enrollment at the institution. The Prepaid Higher Education Expense Board shall determine whether mandatory fees charged by institutions of higher education shall be included in the definition of tuition.

C.18A:71B-67 New Jersey Prepaid Higher Education Expense Program.

4. a. There is established the New Jersey Prepaid Higher Education Expense Program to provide a means for payment of the costs of tuition in advance of enrollment at a public institution of higher education. Moneys remitted in accordance with advance payment contracts shall be combined and invested in a manner that is intended to yield sufficient interest to

generate the difference between the prepaid amount and the average in-state tuition costs at public institutions of higher education in the State at the time that the benefits are exercised. The program shall pay to the public institution of higher education at which the qualified beneficiary is enrolled an amount equal to the institution's tuition rate at the time the benefits are exercised.

b. The program shall be administered by the Prepaid Higher Education Expense Board established pursuant to section 6 of this act.

C.18A:71B-68 Prepaid Higher Education Expense Trust Fund.

5. a. There is created within the Prepaid Higher Education Expense Board the Prepaid Higher Education Expense Trust Fund. The fund shall consist of State appropriations, moneys acquired from other governmental or private sources, and moneys remitted in accordance with advance payment contracts. Dividends, interest, and gains accruing to the fund shall increase the total funds available for the program.

b. Any funds associated with contracts for which refunds are due, but have not been claimed, shall increase the total funds available for the program. However, the board shall establish procedures for notifying purchasers of any unclaimed refund and shall establish a time period after which a refund may not be claimed.

c. Any balance contained in the fund at the end of a fiscal year shall remain therein and shall be available for carrying out the purposes of the program.

d. The assets of the fund shall be maintained, invested, and expended solely for the purposes of this act and shall not be loaned, transferred, or otherwise used by the State for any purpose other than the purposes of this act. This subsection shall not be construed to prohibit the board from investing in, by purchase or otherwise, bonds, notes or other obligations of the State or an agency or instrumentality of the State.

e. Unless otherwise specified by the board, assets of the fund shall be expended in the following order of priority:

(1) to make payments to institutions of higher education on behalf of qualified beneficiaries;

(2) to make refunds upon cancellation of advance payment contracts;
and

(3) to pay the costs of program administration and operations.

f. The board shall administer the fund in a manner that is sufficiently actuarially sound to defray the obligations of the program. The board shall annually evaluate or cause to be evaluated the actuarial soundness of the fund. If the board determines a need for additional assets in order to

preserve actuarial soundness, the board may adjust the terms of subsequent advance payment contracts to ensure soundness.

g. If the board finds that a surplus in the fund exists, the board may compensate purchasers of advance payment contracts in a manner that the board determines to be appropriate.

C.18A:71B-69 Prepaid Higher Education Expense Board.

6. a. The Prepaid Higher Education Expense Board is established as a body corporate and politic in the Executive Branch of State Government and for the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the board is allocated in, but not of, the Department of State. Notwithstanding this allocation, the board shall be independent of any supervision or control by the department or by any board or officer thereof.

b. The board shall consist of 11 members, including the State Treasurer or a designee, the executive director of the Commission on Higher Education or a designee, the executive director of the Higher Education Student Assistance Authority or a designee, the chair of the New Jersey Presidents' Council or a designee; and seven members appointed by the Governor without regard for political affiliation, one upon the recommendation of the Speaker of the General Assembly, one upon the recommendation of the Minority Leader of the General Assembly, one upon the recommendation of the President of the Senate, and one upon the recommendation of the Minority Leader of the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management or investment management. Members appointed by the Governor shall serve terms of three years, except that in making the initial appointments, the Governor shall appoint two members to serve for one year, two members to serve for two years, and three members to serve for three years. Any member appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve until a successor qualifies. Members of the board shall serve without compensation but shall be reimbursed for any necessary expenses incurred in the performance of their duties.

c. The Governor shall appoint a member of the board to serve as the initial chair of the board. Thereafter, the board shall elect a chair annually. The board shall annually elect a board member to serve as vice-chair and shall designate a secretary-treasurer who need not be a member of the board. The secretary-treasurer shall keep a record of the proceedings of the board and shall be the custodian of all printed material filed with or by the board and of its official seal. Notwithstanding the existence of vacancies on the board, a majority of the members shall constitute a quorum. The board shall

take no official action in the absence of a quorum. The board shall meet, at a minimum, on a quarterly basis at the call of the chair.

d. Neither the members of the board, nor any officer or employee of the board shall be liable personally for the debts, liabilities or obligations of the program established pursuant to this act.

C.18A:71B-70 Powers of the board.

7. The board shall have the powers necessary or proper to carry out the provisions of this act, including, but not limited to, the power to:

a. appoint an executive director to serve as the chief administrative and operational officer of the board and to perform other duties assigned by the board;

b. adopt an official seal and alter the same at pleasure;

c. sue and be sued in its own name;

d. make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.);

e. purchase, without advertising for bids or after having rejected all bids obtained pursuant to advertising therefor, any materials, supplies, goods, services or equipment pursuant to a contract or contracts for such materials, supplies, goods, services or equipment entered into on behalf of the State by the Division of Purchase and Property;

f. establish agreements or other transactions with federal, State, and local agencies, including institutions of higher education;

g. invest funds not required for immediate disbursement;

h. hold, buy, and sell any instruments, obligations, securities, and property determined appropriate by the board;

i. employ personnel, including financial and computer experts, legal counsel, accountants, managers and auditors, as may be necessary; to fix their compensation; and to promote and discharge the employees and agents; all without regard to the provisions of Title 11A of the New Jersey Statutes;

j. solicit and accept gifts, grants, loans, and other aids from any source or participate in any other way in any government program to carry out the purposes of this act;

k. require a reasonable length of State residence for qualified beneficiaries, as appropriate;

l. reasonably restrict the number of participants in the county college plan and the university plan according to criteria developed by the board. A person denied participation solely on the basis of this restriction shall be granted priority for participation during the succeeding year;

- m. segregate contributions and payments to the fund into various accounts;
- n. establish reasonable administrative fees in connection with any transaction and impose reasonable penalties, including default, for delinquent payments or for entering into an advance payment contract on a fraudulent basis;
- o. procure insurance against any loss in connection with the property, assets and activities of the fund or the board;
- p. provide for the receipt of contributions in lump sums or installment payments;
- q. impose reasonable limits on the length of time within which a qualified beneficiary shall be required to begin to exercise benefits under the program. The board shall also determine whether to impose limits on the total amount of time that the qualified beneficiary is permitted to exercise the benefits under the program;
- r. delineate the terms under which payments may be withdrawn from the fund and impose reasonable fees and charges for withdrawals;
- s. define for the purposes of this act the maximum number of credit hours which may be purchased under the program for an associate degree; the maximum number of credit hours which may be purchased under the program for a baccalaureate degree; the average current and projected tuition within the county college system and the average current and projected tuition of the four-year public institutions of higher education utilized to limit the contractual obligations of the board to qualified beneficiaries;
- t. adopt rules and regulations to implement this act; and
- u. take all actions required so that the program is treated as a qualified State tuition program under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

C.18A:71B-71 Establishment of comprehensive investment plan, administration of program, annual report.

8. a. The board, acting with the approval of the State Investment Council in the Division of Investment, shall establish a comprehensive investment plan for the purposes of this act and annually review the plan to assure that the program remains actuarially sound. The comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of the fund. The board may place assets of the fund in savings accounts or use the funds to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness or other investment products, pursuant to the comprehensive investment plan and in such proportions as may be designated or approved under that plan. The

board shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89). The insurance, annuity, savings or investment products shall be underwritten and offered in compliance with the applicable federal and State laws and regulations and by persons who are duly authorized by applicable federal and State authorities.

b. The board may delegate responsibility for administration of the program to a person the board determines to be qualified. Directly or through the person, the board may contract, in accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.), with a private corporation or institution authorized to do business in this State to provide such services as may be a part of the program or as may be deemed necessary for implementation of the program, including, but not limited to, providing consolidated billing, individual and collective record keeping and accounting, asset purchase, control and safekeeping, investment management, marketing, administration, program operations, and other services deemed necessary and proper to carry out the purposes of this act. In the event that the board delegates a private entity as the investment manager, the assets of the fund shall be invested in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

The board shall determine whether the services deemed necessary and proper to carry out the purposes of this act shall be provided by a single or multiple entities.

c. The board shall annually prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the fund and a description of the financial condition of the program at the close of each fiscal year. The report shall be submitted to the Governor, the President of the Senate, the Speaker of the General Assembly, the State Treasurer, the executive director of the New Jersey Commission on Higher Education and the executive director of the Higher Education Student Assistance Authority on or before August 1 each year. In addition, the board shall make the report available to purchasers of advance payment contracts. The board shall provide to the Commission on Higher Education by August 1 each year complete advance payment contract sales information, including projected higher education enrollments of qualified beneficiaries.

d. The accounts of the funds shall be subject to annual audits by the State Auditor or a designee. In addition, the board shall commission an annual independent audit of the program. The results of the independent audit shall be provided to the Governor, the President of the Senate, the Speaker of the General Assembly, the State Treasurer, the executive director of the New Jersey Commission on Higher Education and the executive

director of the Higher Education Student Assistance Authority. If the board delegates responsibility for the administration of the comprehensive investment plan pursuant to subsection b. of this section, the cost of the independent audit shall be borne by that person.

e. The board may make available insurance coverage written exclusively for the purpose of protecting advance payment contracts, and the purchasers or beneficiaries thereof, which may be issued in the form of a group term life policy to purchasers of advance payment contracts.

f. Materials produced for the purpose of marketing the program shall be submitted to the board for review and approval. Marketing materials shall not be made available or distributed to the public prior to the materials being approved by the board. An institution of higher education may distribute marketing materials produced for the program. The State and the board shall not be liable for misrepresentation of the program by a marketing agent.

g. Statements, reports on distributions and information returns relating to accounts shall be prepared, distributed, and filed to the extent required by section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

C.18A:71B-72 Development of advance payment contract, terms.

9. a. The board shall develop an advance payment contract with the assistance of the Office of the Attorney General. An advance payment contract shall be exempt from the provisions of Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title 17B of the New Jersey Statutes. The contents of the contract shall include, but not be limited to, the following:

(1) the amount of the payments and the number of payments required from a purchaser;

(2) the terms and conditions under which purchasers are required to remit payments, including, but not limited to, the date or dates upon which each payment is due;

(3) provisions for late payment charges and for default;

(4) provisions for penalty fees for withdrawals from the fund;

(5) the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;

(6) the name of any person who may cancel the contract. The terms of the contract shall specify whether the contract may be canceled by the purchaser, the qualified beneficiary, a specific designated person or any combination of these persons;

(7) the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancella-

tion of the contract pursuant to those terms and conditions, and the method for determining the amount of refund;

(8) the time limitations, if any, within which the qualified beneficiary is required to claim benefits through the program. If time limitations are included in the contract, the time expended by a qualified beneficiary as an active duty member of any of the armed services of the United States shall be added to the period of time permitted to exercise the benefits;

(9) the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and

(10) other terms and conditions deemed by the board to be necessary or proper.

b. In addition to the provisions of subsection a. of this section an advance payment contract shall include the following:

(1) the number of credit hours contracted by the purchaser;

(2) the plan toward which the credit hours shall be applied;

(3) the assumption of a contractual obligation by the board to the qualified beneficiary to provide for a specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate .

C.18A:71B-73 Availability of advance payment contracts; plans.

10. a. At a minimum, the board shall make advance payment contracts available for two independent plans to be known as the county college plan and the university plan.

(1) Through the county college plan, the advance payment contract shall provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of credit hours which may be purchased under the program for an associate degree. The cost of participation in the county college plan shall be based primarily on the average current and projected tuition within the county college system and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by the qualified beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary chooses to attend a four-year public institution of higher education, the qualified beneficiary may convert the maximum number of credit hours which may be purchased under the program for an associate degree from a county college plan to a university plan. Each qualified beneficiary shall be classified as an in-county resident

for tuition purposes regardless of his actual legal residence during the period in which benefits under the program are being utilized.

(2) Through the university plan, the advance payment contract shall provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of credit hours which may be purchased under the program for a baccalaureate degree. The cost of participation in the university plan shall be based primarily on the average current and projected tuition of the four-year public institutions of higher education and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by the beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary fails to be admitted to a four-year public institution of higher education or chooses to attend a county college, the qualified beneficiary may convert the maximum number of credit hours which may be purchased under the program for an associate degree from a university plan to a county college plan and may retain the remaining credit hours in the university plan or may request a refund for prepaid credit hours in excess of the maximum number of credit hours which may be purchased under the program for an associate degree. A refund may also be requested for the difference in the cost of credit hours under the university plan and the county college plan for the number of credit hours converted to the county college plan. Each qualified beneficiary shall be classified as a resident for tuition purposes regardless of his actual legal residence during the period in which benefits under the program are being utilized.

b. In addition to the plans required pursuant to subsection a. of this section, the board may make advance payment contracts available for other plans, such as the county college plus university plan whereby the advance payment contract would provide tuition that would allow a qualified beneficiary to attend a county college for an associate degree and then attend a four-year public institution of higher education for a baccalaureate degree.

c. The board shall establish procedures for conversions between plans established under the program. The procedures shall include, but not be limited to, the conditions under which a conversion may occur and the method for calculating any refund due.

d. A qualified beneficiary may apply a county college plan or a university plan toward any eligible independent institution of higher education. The board shall transfer or cause to have transferred to the eligible independent institution of higher education designated by the qualified beneficiary an amount not to exceed the weighted average tuition purchased under the advance payment contract. In the event that the cost of

tuition at the eligible independent institution of higher education is less than the weighted average tuition purchased under the advance payment contract, the amount transferred shall not exceed the actual cost of tuition. A transfer authorized pursuant to this subsection shall not exceed the number of credit hours contracted on behalf of a qualified beneficiary.

e. A qualified beneficiary may apply the benefits of an advance payment contract toward an eligible out-of-State institution of higher education. Institutional eligibility for out-of-State institutions of higher education shall be determined by the board, but in making those determinations the board shall recognize that the benefits may only be used at an out-of-State institution of higher education whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board shall transfer or cause to have transferred to the eligible out-of-State institution of higher education designated by the qualified beneficiary an amount not to exceed the weighted average tuition purchased under the advance payment contract. In the event that the cost of tuition at the eligible out-of-State institution of higher education is less than the weighted average tuition purchased under the advance payment contract, the amount transferred shall not exceed the actual cost of tuition. A transfer authorized pursuant to this subsection shall not exceed the number of credit hours contracted on behalf of a qualified beneficiary.

C.18A:71B-74 Conditions for payment of refunds.

11. a. The board shall determine the conditions under which refunds are payable under the program. Unless authorized by the board or under the provisions of this section, a refund shall not exceed the amount paid into the fund by the purchaser. A refund may exceed the amount paid into the fund in the following circumstances:

(1) if the qualified beneficiary is awarded a scholarship (or allowance or payment described in subparagraph (B) or (C) of paragraph (1) of subsection (d) of section 135 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover the benefits included in the advance payment contracts, moneys paid for the purchase of the advance payment contracts may be returned to the purchaser in enrollment period installments coinciding with the matriculation by the qualified beneficiary in amounts equal to the lesser of the original purchase price plus 5% interest compounded annually, or the weighted average tuition purchased under the advance payment contract; and

(2) in the event of the death or disability of the qualified beneficiary, moneys paid for the purchase of advance payment contracts shall be returned to the purchaser together with 5% interest compounded annually.

b. A refund shall not be authorized through an advance payment contract for any school year partially attended but not completed. For purposes of this subsection, a school year partially attended but not completed means any one enrollment period whereby the student is still enrolled at the conclusion of the official drop-add period, but withdraws before the end of the enrollment period.

c. If a qualified beneficiary does not complete a county college plan or university plan, for reasons other than specified in subsection a. of this section, the purchaser shall receive a refund of the amount paid into the fund for the remaining unattended years of the advance payment contract pursuant to rules promulgated by the board and in accordance with the provisions of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

C.18A:71B-75 Exemption from creditors.

12. Moneys paid into or out of the fund by or on behalf of a purchaser or qualified beneficiary of an advance payment contract for the purposes of financing the cost of qualified higher education expenses under the program are exempt from all claims of creditors of the purchaser or the beneficiary.

C.18A:71B-76 Remittance of payments through governmental payroll deductions.

13. The State or any State agency, county, municipality, or other political subdivision may, by contract or collective bargaining agreement, agree with any employee to remit payments toward advance payment contracts through payroll deductions made by the appropriate officer or officers of the State, State agency, county, municipality, or political subdivision. The payments shall be held and administered in accordance with this act.

C.18A:71B-77 Appropriations necessary for distributions.

14. If the investment manager is the Division of Investment in the Department of the Treasury, in order to meet the obligations of the board under this act, there shall be paid to the board for deposit in the fund, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chair of the board as necessary to provide that amount at the time of distribution. The chair shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the fund the amount aforesaid, and the sums so certified shall be appropriated and paid to the board during the then current State fiscal year.

C.18A:71B-78 Discontinuance of program.

15. In the event that the State Treasurer determines the program to be financially infeasible, the State may discontinue the provision of the

program. A qualified beneficiary who has been accepted by and is enrolled or is within five years of enrollment in an institution of higher education shall be entitled to exercise the benefits for which he has contracted. All other contract holders shall receive a refund of the amount paid into the fund.

C.18A:71B-79 Admission to public colleges, guaranteed; requirements.

16. a. A qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational-educational program, based upon grades in core curriculum content subject areas as determined by the board, or who graduates in the top 15% of his high school graduating class shall be admitted to a public institution of higher education. In order to be admitted to a public institution of higher education pursuant to this section, the qualified beneficiary shall meet all of the institution's requirements for admittance. This provision shall not be construed to promise or guarantee that a qualified beneficiary shall be admitted to a particular public institution of higher education.

b. In order to effectuate the provisions of subsection a. of this section, the board, in consultation with the Commission on Higher Education, shall develop a process to assist qualified beneficiaries in applying to all public institutions of higher education.

C.18A:71B-80 Admission to particular college, continuance not guaranteed; obligation of State limited.

17. a. Nothing in this article shall be construed to guarantee that a qualified beneficiary will be admitted to a particular higher education institution or be allowed to continue enrollment at or graduate from a higher education institution after admission.

b. Nothing in this article shall establish any obligation or liability on the part of this State or any agency or instrumentality of this State with respect to any federal or State tax liability of any contributor or designated beneficiary in this program.

c. Under regulations promulgated by the board, every contract and application that may be used in connection with the program shall clearly indicate that the contract is not insured by this State, other than as set forth in sections 14 and 15 of P.L.2001, c.262 (C.18A:71B-77 and C.18A:71B-78).

18. N.J.S.18A:71B-40 is amended to read as follows:

Selection of investment manager.

18A:71B-40. a. The authority shall select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the authority shall consider the impact of fees and costs imposed by the manager or managers on yield to contributors.

b. The authority may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program.

c. The authority may provide a contributor with a choice of investment managers or investment instruments or both for the program if both of the following conditions exist:

(1) the federal Internal Revenue Service has provided guidance that providing a contributor with a choice of investment managers or instruments under a State tuition program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

(2) the authority concludes that a choice of investment managers or of investment instruments is in the best interest of contributors and will not interfere with the administration of the program.

d. the authority terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the authority shall select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the authority would not cause a program to cease to be a qualified State tuition program for the purposes of section 529 of the federal Internal Revenue Code, 26 U.S.C.s.529.

e. If the selection process provided for in this section results in an investment manager other than the Division of Investment, the authority shall provide for the orderly transfer of accounts and shall ensure that all the rights of the contributors and designated beneficiaries participating in the program as of the effective date of P.L.2001, c.262 (C.18A:71B-64 et al.), are protected.

19. N.J.S.18A:71B-44 is amended to read as follows:

Assurance of availability of principal.

18A:71B-44. a. If the investment manager is the Division of Investment in the Department of the Treasury, in order to assure the availability of principal of any amount contributed under this article, there shall be paid to the authority for deposit in the trust, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chair of the authority as necessary to provide that amount at the time of distribution. The chair shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the trust the amount aforesaid, and the sums so certified shall be appropriated and paid to the authority during the then current State fiscal year.

b. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed under this article shall be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

C.18A:71B-41.1 Exemption from claims of creditors for NJBEST accounts.

20. Moneys paid into or out of an NJBEST account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified higher education expenses under this article are exempt from all claims of creditors of the contributor or the designated beneficiary.

21. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to read as follows:

C.54A:6-25 State tuition programs, education; distributions, certain, excluded from gross income.

13. a. Gross income shall not include earnings on an education individual retirement account or a qualified State tuition program account until the earnings are distributed from the account, at which time they shall be includible in the gross income of the distributee except as provided in this section.

b. Gross income shall not include qualified distributions as defined in paragraph (3) of subsection c. of this section.

c. For purposes of this section:

(1) "Education individual retirement account" means an education retirement account as defined pursuant to paragraph (1) of subsection (b) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.530.

(2) "Qualified State tuition program account" means an account established pursuant to the "New Jersey Better Educational Savings Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.), an account established pursuant to the "New Jersey Prepaid Higher Education Expense Program,"

P.L.2001, c.262 (C.18A:71B-64 et seq.) or an account established pursuant to any qualified State tuition program, as defined pursuant to subsection (b) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to any such program.

(3) "Qualified distribution" means any of the following:

(a) a distribution from a qualified State tuition program account that is used for qualified higher education expenses as defined pursuant to paragraph (3) of subsection (e) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

(b) a rollover from one account to another account as described in clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of section 529 or paragraph (5) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

(c) a change in designated beneficiaries of an account as described in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of section 529 or paragraph (6) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

d. The portion of a distribution from an education individual retirement account or a qualified State tuition program account that is attributable to earnings shall be determined in accordance with the principles of section 72 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

22. There is appropriated from the General Fund to the Prepaid Higher Education Expense Board in, but not of, the Department of State \$250,000 to effectuate the provisions of this act.

23. This act shall take effect immediately.

Approved December 11, 2001.

CHAPTER 263

AN ACT concerning elevators and supplementing P.L.1975, c. 217 (C.52:27D-119 et seq.).

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

C.52:27D-123.14 Dimensional requirements for certain elevators to accommodate stretchers.

1. Notwithstanding any other law or regulation to the contrary, the commissioner shall modify, within 180 days of the effective date of this act, the code pertaining to elevators to require that an elevator, when installed in any newly-constructed multiple dwelling for which a construction permit is issued subsequent to the effective date of the regulations promulgated to effectuate P.L.2001, c.263 (C.52:27D-123.14), be of adequate dimensions to accommodate an ambulance cart that is 24 inches by 76 inches in the horizontal open position.

2. This act shall take effect immediately.

Approved December 11, 2001.

CHAPTER 264

AN ACT concerning certain landlord registration filings and amending P.L.1974, c.50 and P.L.1981, c.442.

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

1. Section 2 of P.L.1974, c.50 (C.46:8-28) is amended to read as follows:

C.46:8-28 Certificate of registration; filing, contents.

2. Every landlord shall, within 30 days following the effective date of this act, or at the time of the creation of the first tenancy in any newly constructed or reconstructed building, file with the clerk of the municipality, or with such other municipal official as is designated by the clerk, in which the residential property is situated in the case of a one-dwelling unit rental or a two-dwelling unit non-owner occupied premises, or with the Bureau of Housing Inspection in the Department of Community Affairs in the case of a multiple dwelling as defined in section 3 of the "Hotel and Multiple Dwelling Law" (C.55:13A-3), a certificate of registration on forms prescribed by the Commissioner of Community Affairs, which shall contain the following information:

a. The name and address of the record owner or owners of the premises and the record owner or owners of the rental business if not the same persons. In the case of a partnership the names of all general partners shall be provided;

- b. If the record owner is a corporation, the name and address of the registered agent and corporate officers of said corporation;
- c. If the address of any record owner is not located in the county in which the premises are located, the name and address of a person who resides in the county in which the premises are located and is authorized to accept notices from a tenant and to issue receipts therefor and to accept service of process on behalf of the record owner;
- d. The name and address of the managing agent of the premises, if any;
- e. The name and address, including the dwelling unit, apartment or room number of the superintendent, janitor, custodian or other individual employed by the record owner or managing agent to provide regular maintenance service, if any;
- f. The name, address and telephone number of an individual representative of the record owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the premises or any unit of dwelling space therein, including such emergencies as the failure of any essential service or system, and who has the authority to make emergency decisions concerning the building and any repair thereto or expenditure in connection therewith;
- g. The name and address of every holder of a recorded mortgage on the premises;
- h. If fuel oil is used to heat the building and the landlord furnishes the heat in the building, the name and address of the fuel oil dealer servicing the building and the grade of fuel oil used.

2. Section 3 of P.L.1981, c.442 (C.46:8-28.1) is amended to read as follows:

C.46:8-28.1 Certificate; indexing, filing; inspection; fee; validation.

3. In the case of a filing under section 2 of P.L.1974, c.50 (C.46:8-28) with the municipal clerk, or with such other municipal official as is designated by the clerk, the clerk or designated official shall index and file the certificate and make it reasonably available for public inspection. In the case of a filing with the Bureau of Housing Inspection, the filing shall be accompanied by the filing fee required pursuant to section 12 of P.L.1967, c. 76 (C. 55:13A-12). The bureau shall review the certificate and, if it is found to be in conformity with this law and any regulations promulgated hereunder, validate the certificate and issue a validated copy to the landlord and a validated copy to the clerk of the municipality in which the building or project is located. The clerk shall index the validated certificates, or forward them to the designated official for indexing, and the certificates

shall be made available as with the certificates required of one and two dwelling unit nonowner occupied premises.

3. Section 3 of P.L.1974, c.50 (C.46:8-29) is amended to read as follows:

C.46:8-29 Provision of copy of certificate of registration to tenant.

3. Within 30 days following the effective date hereof, and at the time of the creation of a new tenancy, every landlord shall provide each occupant or tenant in his building or project a copy of the certificate of registration required by section 2 of this act (C.46:8-28). If an amended certificate is filed the landlord shall furnish each occupant or tenant with a copy of the amended certificate within seven days after the amended certificate is filed with the municipal clerk, or with such other municipal official as is designated by the clerk, in the case of a tenant occupied one family dwelling or a non-owner occupied two family dwelling and within seven days of receipt of a validated certificate from the Bureau of Housing Inspection in the case of a building or project subject to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).

4. This act shall take effect immediately.

Approved December 11, 2001.

CHAPTER 265

AN ACT concerning the limitation of liability of owners, lessees and occupants of certain premises subject to conservation restrictions or certain other interests, 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:42A-8.1 Liability of owners of certain premises which allow public access.

1. a. An owner, lessee or occupant of premises on which a conservation restriction is held by the State, a local unit, or a charitable conservancy and upon which premises subject to the conservation restriction public access is allowed, or of premises upon which public access is allowed pursuant to a public pathway or trail easement held by the State, a local unit, or a charitable conservancy, and regardless of whether public notice is provided, shall be liable to a person injured on the premises only for:

(1) willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or

(2) injury caused by acts of negligence on the part of the owner, lessee or occupant of the premises to any person where permission to engage in sport or recreational activity on the premises was granted for a consideration other than the consideration, if any, paid to the landowner by the State, local unit, or charitable conservancy; or

(3) injury caused by acts of gross negligence on the part of the owner, lessee, or occupant of the premises to any person entering or using the land for a use or purpose unrelated to public access purposes.

b. For the purposes of this section:

"Charitable conservancy" means the same as that term is defined pursuant to section 2 of P.L.1979, c.378 (C.13:8B-2), or a "qualifying tax exempt nonprofit organization" as defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3);

"Conservation restriction" means the same as that term is defined pursuant to section 2 of P.L.1979, c.378 (C.13:8B-2);

"Local unit" means the same as that term is defined pursuant to section 2 of P.L.1979, c.378 (C.13:8B-2), or a "local government unit" as defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3);

"Premises" means any land in the State (1) regardless of location or characterization or classification of location including but not limited to land characterized or classified as being located in an urban, suburban, rural, semi-rural, populous, developed, undeveloped, unpopulous, residential, nonresidential, commercial, or industrial area, and (2) regardless of whether or not the land is improved or maintained in a natural condition, or used as part of a commercial enterprise; and

"Sport or recreational activity" means a "sport and recreational activity" as defined pursuant to section 1 of P.L.1968, c.73 (C.2A:42A-2).

2. This act shall take effect immediately.

Approved December 11, 2001.

CHAPTER 266

AN ACT authorizing municipalities to contract for property tax lien management services under certain circumstances and supplementing Title 54 of the Revised Statutes.

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

C.54:5-19.2 Definitions relative to contracts for property tax lien management services.

1. As used in this act:

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Property" means parcels of land and their improvements on which the municipality holds a tax lien, or which were acquired by the municipality through the property tax foreclosure process, and including such parcels that the municipality possesses and for which it acts as a receiver pursuant to section 1 of P.L.1942, c.54 (C.54:5-53.1).

"Qualified municipality" means a municipality that is qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.), a municipality that has issued qualified bonds pursuant to the provisions of the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.) or a municipality identified by the director to be facing serious fiscal distress.

C.54:5-19.3 Contracts for property tax lien management services.

2. Notwithstanding any other provision of law to the contrary, the governing body of a qualified municipality, by resolution, may enter into contracts for property tax lien management services with organizations for the purpose of assisting the qualified municipality in managing its property. For the purposes of this section, property tax lien management services shall be comprehensive in nature given the needs of the qualified municipality, and shall include the following activities as necessary for a comprehensive program of property tax lien management:

a. Developing and administering an asset management and disposition plan for properties owned by the municipality;

b. Developing and administering activities to encourage and assist property owners in satisfying their obligations and retaining their properties, which shall include, but not be limited to working with lenders and non-profit agencies to develop programs that help residential taxpayers address their credit problems and related service programs;

c. Educating property owners about financial alternatives in addressing back taxes, including making installment payments pursuant to R.S.54:5-65 et seq.;

d. Recommending and managing possession and receivership, foreclosure, and property sale activities;

e. Assembling and marketing properties to potential buyers and developers through public sale of properties to be sold, or by assignment sale of tax liens pursuant to N.J.S.54:5-112 and N.J.S.54:5-113;

f. Developing a database of information relating to all properties for which the qualified municipality holds a lien, where at the conclusion of the contract, the contents of the database shall be provided to that municipality in an electronic format that can be used by the municipality;

g. Providing regular reports to the governing body of the qualified municipality and the tax collector on the status of property tax lien management activities and the information obtained through the management process;

h. Managing property owned by the qualified municipality in preparation for its sale, assignment, or possession; or

i. Other similar programs and activities as approved by the director.

C.54:5-19.4 Contracts to include compensation to contractor, bases.

3. Contracts for property tax lien management services shall include compensation to the contractor based on any combination of the following mechanisms:

a. A percentage of proceeds earned by the qualified municipality from the outright sale of property or from an assignment sale;

b. A percentage of the proceeds from installment agreements entered into through the efforts of the contractor;

c. A percentage of the proceeds from the management of properties assigned to the contractor as part of possession and receivership, or preparing for a sale or assignment; or

d. A fixed amount for general services affecting all parcels whose tax lien is owned by the municipality, which may, at the option of the municipality, be either prorated and charged against such properties as a municipal charge, or be appropriated as if it were subject to the provisions of sections 1 through 5 of P.L.1961, c.22 (C.40A:4-55.1 through 40A:5-55.5).

C.54:5-19.5 Approval process by governing body.

4. Contracts for property tax lien management shall be approved by the governing body of the qualified municipality and shall then be submitted to the director for approval. The mayor or other chief executive officer shall not execute the contract until the director approves the contract. If the director neither approves nor returns the contract with recommendations for amendment within 45 days of the director's receipt of the contract, then the contract shall be deemed as approved.

C.54:5-19.6 Provision of information.

5. The municipal tax collector of the qualified municipality shall provide the property tax lien management service contractors with any and all information as the tax collector may have available that is related to tax liens, and shall make available records of the tax collector's office accessible to the contractor as the contractor may require. Nothing in P.L.2001, c.266 (C.54:5-19.2 et seq.) shall supersede the responsibility of the tax collector to collect and record property tax receipts and manage those responsibilities statutorily assigned to the tax collector.

C.54:5-19.7 Contracts considered professional service; duration.

6. Notwithstanding the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) to the contrary, contracts for property tax lien management services shall be considered as a professional service and may be entered into for a period not to exceed three years.

7. This act shall take effect immediately.

Approved December 11, 2001.

CHAPTER 267

AN ACT concerning third party administrators of health benefits plans and third party billing services and supplementing Title 17B of the New Jersey Statutes.

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

C.17B:27B-1 Definitions relative to third party administrators, billing services.

1. As used in this act:

"Benefits payer" means an insurer authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide and assumes financial risk for the payment of health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.

"Client" means a health care provider that contracts with a third party billing service to remit claims to benefits payers on behalf of the provider or other claimant.

"Commissioner" means the Commissioner of Banking and Insurance.

"Enrollee" means a person entitled to receive benefits under a health benefits plan.

"Health benefits plan" means a benefits plan which pays or provides hospital and medical expense or dental benefits for covered services.

"Health care provider" or "provider" means an individual or entity which provides a covered benefit or service.

"Insurer" means a licensed health insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization.

"Third party administrator" means a person or entity that: processes claims and pays claims on behalf of a benefits payer without the assumption of financial risk for the payment of health or dental benefits. Third party administrator shall include: (1) an entity not licensed as an insurer that is not an affiliate or subsidiary of an insurer, that processes claims on behalf of a benefits payer; (2) an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of the insurer; and (3) an entity that is a subsidiary or affiliate of an insurer that only processes claims on behalf of benefits payers other than insurers. Third party administrator shall not include an employee, affiliate or subsidiary of a benefits payer formed for the purpose of processing and paying claims solely on behalf of the benefits payer, nor shall it include a collection agency or bureau or pharmacy benefits manager.

"Third party billing service" means a person or entity that is paid by a health care provider to process claims or claims payments on behalf of the health care provider.

C.17B:27B-2 Licensure, registration required for third party administrators.

2. a. On or after January 1, 2002, no person shall act as, offer to act as, or hold himself out to be, a third party administrator in this State unless licensed or registered by the commissioner in accordance with this act. Every third party administrator that is either: (1) an entity that is not licensed as an insurer and is not an affiliate or subsidiary of an insurer; or (2) an entity that is an affiliate or a subsidiary of an insurer that only processes or pays claims on behalf of benefits payers other than insurers shall be licensed under the provisions of this act. Every third party administrator that is an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of both the insurer and benefits payers other than the insurer shall be registered with the commissioner pursuant to the provisions of this act.

b. Application for licensure shall be made to the commissioner on a form provided by the commissioner. The commissioner shall establish by regulation the information that shall accompany the application, which may include, but need not be limited to:

(1) a copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership

agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

(2) a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

(3) the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee; the principal officers or partners; shareholders owning or having the right to acquire 10% or more of the voting securities of the corporation or partnership interest of a partnership, or equity interest, in the case of another form of business organization; each person who has loaned funds to the applicant for the operation of its business; a statement of any criminal convictions and civil, regulatory or enforcement action, including actions related to professional licensing, taken or pending against any principal officer or owner of the applicant; and the relationship with any other business entity, including a parent corporation;

(4) a copy of the applicant's most recent financial statements audited by an independent certified public accountant. If the financial affairs of the applicant's parent company are audited by an independent certified public accountant, but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, audited by an independent certified public accountant, shall be submitted. A consolidated financial statement of the applicant and its parent company shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this act;

(5) a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping and a three-year projection of anticipated operating results, a statement of the sources of working capital and any other sources of funding and provision for contingencies that enable the applicant to perform the work for which it has contracted;

(6) a list of the benefits payers under contract with the applicant and a copy of the standard contract or contracts used by the applicant in the course of business; and

(7) a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all

lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

With respect to an applicant for licensure that is an affiliate or subsidiary of an insurer, the commissioner shall establish by regulation the information necessary to be filed, which shall not be unnecessarily duplicative of any information already on file with the Department of Banking and Insurance.

An application for licensure shall be approved if not disapproved by the commissioner within 60 days of receipt of a completed application. An application shall be deemed to be complete if all of the information required to be submitted to the commissioner by regulation has been submitted by the applicant.

c. Registration shall be on a form prescribed by the commissioner, which shall include: (1) a copy of the applicant's basic organizational documents, as required by the commissioner; (2) the names and official positions of the persons responsible for the conduct of the affairs of the applicant; (3) a copy of the applicant's most recent financial statements, or a consolidated financial statement of the applicant and its parent company; (4) such other information as the commissioner may require. An application for registration shall be approved if not disapproved by the commissioner within 60 days of receipt of a completed application. For the purposes of this subsection, an application shall be complete if all of the information required to be submitted to the commissioner by regulation has been submitted by the applicant. Information required pursuant to this subsection shall not be unnecessarily duplicative of any information already on file with the Department of Banking and Insurance.

C.17B:27B-3 Additional information required for licensure, registration.

3. In addition to the information required by section 2 of this act, the applicant for licensure or registration shall file with the commissioner:

- a. a description of the applicant's proposed method of marketing its services;
- b. a statement setting forth the means by which the applicant is to be compensated;
- c. a description of the complaint and appeals procedures instituted by the applicant; and
- d. a description of the quality assurance procedures established by the applicant.

An applicant shall make available for inspection by the commissioner copies of all standard contracts with benefits payers or other persons with whom it does business, including subcontractors and reinsurers. In the case of an applicant for registration, the information required to be filed with the

commissioner shall apply only to services provided to benefits payers other than an insurer.

C.17B:27B-4 Issuance of license, approval of application for registration.

4. The commissioner may issue a license to an applicant or approve an application for registration as a third party administrator if he finds that the applicant meets the standards established by this act, including, but not limited to, the following:

a. all of the materials required by this act or by the commissioner have been filed;

b. the persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;

c. the applicant has demonstrated the ability to assure that its services will be performed in a manner which will ensure the efficient operation of its business, including appropriate financial controls;

d. the standard contract forms to be used by the applicant are acceptable;

e. the applicant has adequate financial arrangements with the benefits payers for which it will perform its services and adequate arrangements for complying with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.); and

f. the compensation arrangements made between the applicant and benefits payers do not result in the assumption of financial risk by the applicant.

In the case of an applicant for registration, the provisions of subsections d., e., and f. of this section shall apply only to services provided by the applicant to benefits payers other than an insurer.

C.17B:27B-5 Denial of license, registration.

5. The commissioner may deny an application for licensure or registration as a third party administrator if he finds that any of the standards established by this act have not been met or for any other reasonable grounds. If the application for licensure or registration is denied, the commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his reasons for denial. The applicant may request a hearing by notice to the commissioner no later than the 30th day following receipt of the notice of denial.

C.17B:27B-6 Provisions of written agreement; requirements.

6. A third party administrator shall not conduct any business with a benefits payer in the absence of a written agreement between the administrator and the benefits payer, except that this shall not apply to a third party administrator registered under the provisions of section 2 of this act with

respect to services performed for an insurer. The agreement shall be retained as part of the official records of the administrator for the duration of the agreement and for five years thereafter. The provisions of the agreement shall include, but shall not be limited to:

a. the services to be provided by the administrator and the means by which the administrator is to be compensated;

b. the responsibilities of the benefits payer to the administrator with respect to claims to be paid by the administrator on behalf of a benefits payer, including: the provision of enrollment and eligibility information; arrangement for a preliminary or escrowed deposit of funds by the benefits payer, if any; the method used for the transmittal of funds from the benefits payer to the administrator; notification by the benefits payer of modifications in the benefits payer's benefits plan; provisions setting forth the respective liability of the administrator and benefits payer for payment of ineligible claims; liability for claims payments that are overdue; and provisions regarding the procurement of reinsurance or stop-loss insurance; and

c. the responsibilities of the administrator to the benefits payer, including: the maintenance of appropriate back-up systems against the loss of records; establishment and maintenance of appropriate financial controls; provisions regarding the benefits payer's rights with respect to conducting claims audits by an outside auditor; the maintenance of appropriate insurance coverage, which may include, but not be limited to, general liability insurance, valuable papers insurance and errors and omissions coverage; appropriate access by the benefits payer to the administrator's records; and procedures for making available the claims experience or other information to the benefits payer at its request, including, but not limited to, monthly reports.

C.17B:27B-7 Access to books, records.

7. a. The commissioner shall have access to all books and records of a third party administrator for the purposes of examination, audit and inspection. Any trade secrets, proprietary information or the identity and addresses of enrollees contained in the books and records shall be kept confidential, except that the commissioner may use the information in any proceeding instituted against the administrator.

b. The benefits payer shall own the records generated by the administrator pertaining to the benefits payer, except that the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to the benefits payer.

c. In the event that an agreement between an administrator and a benefits payer is canceled, notwithstanding the provisions of section 6 of

this act to the contrary, the administrator may, with the written agreement of the benefits payer, transfer all records to a new administrator instead of retaining them for five years.

C.17B:27B-8 Payment to third party administrators not based solely on claims denials.

8. If a third party administrator adjudicates claims under a health benefits plan, the commissions, fees or charges that the benefits payer pays the administrator, shall not be based solely on the number or amount of claims denied by the administrator. This provision shall not prohibit an administrator from receiving performance-based compensation if that compensation is not predicated on denial of claims or coverage.

C.17B:27B-9 Fiduciary responsibility of third party administrators.

9. a. A third party administrator shall be deemed to act in a fiduciary capacity on behalf of the benefits payer in the receipt and transmittal of the benefits payer's funds, and shall have all responsibility attendant to a fiduciary as established by law. Funds transmitted shall be kept in a separate account and shall not be commingled with any other funds. If an account is jointly held by the administrator and the benefits payer, it shall be deposited in a State or federally chartered insured depository institution, and the administrator shall provide a monthly accounting of all transactions in that account. A benefits payer shall have the responsibility to make funds necessary to pay the claims available to the administrator in a timely manner, as provided in the contract. An administrator shall not be liable to any party for the failure of the benefits payer to make funds available to pay claims.

b. An administrator shall maintain in force a fidelity bond in its own name on its officers and employees, in an amount established by the commissioner by regulation.

C.17B:27B-10 Separate accounts for funds remitted.

10. All funds remitted to an administrator by a benefits payer licensed or authorized to do business in this State shall be held by the third party administrator in a separate account maintained in the name of the benefits payer or in a separate account maintained jointly in the names of the benefits payer and the administrator. If funds have been collected by the administrator from a provider or enrollee on behalf of a benefits payer, they shall be maintained in a separate account maintained in the name of the benefits payer, maintained jointly in the names of the benefits payer and the administrator or remitted to the benefits payer, as provided in the contract. Copies of all records pertaining to the collection of funds shall be made available to the benefits payer as provided in the contract.

C.17B:27B-11 Prompt delivery of communications to enrollees.

11. Any policies, certificates, booklets, termination notices or other written communications delivered by the benefits payer to the third party administrator for delivery to enrollees shall be delivered by the administrator promptly, in accordance with the instructions of the benefits payer.

C.17B:27B-12 Notification of material changes to commissioner.

12. A third party administrator shall immediately notify the commissioner of any material change in its ownership, control or other fact or circumstance affecting its qualification for a license.

C.17B:27B-13 Annual reports.

13. A third party administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, in a form and manner prescribed by the commissioner. The annual report shall contain the complete names and addresses of all benefits payers with which the administrator had a contract in effect during the preceding calendar year. The commissioner shall establish a filing fee for the report, by regulation.

C.17B:27B-14 Suspension, revocation of license, registration.

14. The commissioner may suspend or revoke a license or registration issued pursuant to this act if he finds that the third party administrator:

- a. is in an unsound financial condition;
- b. is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to the benefits payers with which it has contracted or the public;
- c. has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;
- d. has violated any lawful rule or order of the commissioner or any provision of State law;
- e. has refused to be examined or produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the commissioner;
- f. has, without just cause, refused or failed to pay proper claims or perform services arising under its contracts;
- g. at any time fails to meet any qualification for which issuance of the license could have been refused had that failure then existed and been known to the commissioner;
- h. has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was held;

- i. is under suspension or revocation in another state; or
- j. has willfully reimbursed enrollees for benefits not eligible under the benefits payer's benefits plan.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this act, the commissioner may, in lieu of suspension or revocation, impose a fine upon the administrator.

C.17B:27B-15 Immediate suspension of license, registration, grounds.

15. The commissioner may, without advance notice or hearing, immediately suspend the license or registration of a third party administrator if he finds that one or more of the following circumstances exist:

- a. the administrator is insolvent or impaired;
- b. a proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in another state; or
- c. the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this State.

C.17B:27B-16 Certification required for third party billing services.

16. On or after January 1, 2002, no person shall act as, offer to act as or hold himself out to be a third party billing service in this State unless certified by the commissioner in accordance with this act. Application for certification shall be made to the commissioner on a form provided by the commissioner. The commissioner shall establish by regulation the information that shall accompany the application, which shall include, but need not be limited to:

- a. a copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;
- b. a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;
- c. the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee, the principal officers or partners, shareholders owning or having the right to acquire 10% or more of the voting securities of the corporation or partnership interest of a partnership or equity interest, in the case of another form of business organization;

d. if the applicant accepts monies from benefits payers on behalf of clients, the application shall include a copy of the applicant's most recent financial statements audited by an independent certified public accountant;

e. a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the third party billing service's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping;

f. a list of the applicant's clients and a copy of the standard contract or contracts used by the applicant in the course of business; and

g. if the applicant accepts monies from benefits payers on behalf of clients, the application shall be accompanied by a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

C.17B:27B-17 Additional information to be filed by third party billing services.

17. In addition to the information otherwise required by this act or by the commissioner, a third party billing service shall file with the commissioner:

a. a description of the applicant's proposed method of marketing its services;

b. a statement setting forth the means by which the applicant is to be compensated;

c. a description of the quality assurance procedures established by the applicant; and

d. a copy of the standard contract or contracts used by the applicant in contracting with providers.

C.17B:27B-18 Approval of applications for certification.

18. The commissioner may approve an application for certification as a third party billing service if he finds that the applicant meets the standards established by this act, including, but not limited to, the following:

a. all of the material required by this act or by the commissioner have been filed;

b. the persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;

c. the applicant has demonstrated the ability to ensure that its services will be performed in a manner which will result in the efficient operation of

its business, including, if the applicant accepts payments from benefits payers on behalf of its clients, appropriate financial controls;

d. the standard contract forms to be used by the applicant are acceptable; and

e. the applicant has adequate arrangements for complying with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

C.17B:27B-19 Denial of applications for certification.

19. The commissioner may deny an application for certification as a third party billing service if he finds that any of the standards established by this act have not been met or for any other reasonable grounds. If the application for certification is denied, the commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his reasons for denial. The applicant may request a hearing by notice to the commissioner no later than the 30th day following receipt of the notice of denial.

C.17B:27B-20 Written agreements required for conducting business as third party billing service.

20. A third party billing service shall not conduct any business with a client in the absence of a written agreement between the billing service and the client. The agreement shall be retained as part of the official records of the third party billing service for the duration of the agreement.

The agreement shall include the services to be provided by the third party billing service on behalf of the client; financial arrangements to be used if the third party billing service accepts monies from benefits payers on behalf of a client; provisions setting forth the respective liability of the client and the third party billing service for the accuracy and eligibility of submitted claims, and for the prompt submission of claims pursuant to the provisions of P.L.1999, c.154 (C.17B:30-23 et al.); and the responsibilities of the third party billing service to the client with respect to the maintenance of appropriate back-up systems against the loss of records, and the maintenance of appropriate insurance coverage by the third party billing service against the risk of loss.

C.17B:27B-21 Fiduciary responsibility of third party billing services.

21. A third party billing service that accepts monies from health benefits payers on behalf of a client shall be deemed to act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds and shall have all responsibility attendant to a fiduciary as established by law. Monies transmitted by benefits payers or on behalf of clients shall be kept in a separate account maintained in the name of the client or jointly in the names of the client and the third party billing service and shall not be

commingled with any other funds of the third party billing service or other clients of the third party billing service.

C.17B:27B-22 Notification of material changes to commissioner.

22. a. A third party billing service shall immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for certification.

b. A third party billing service shall file such reports, at such times as may be required by the commissioner, including reports that will verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

C.17B:27B-23 Suspension, revocation of certification.

23. The commissioner may suspend or revoke a certification issued pursuant to this act if he finds that the third party billing service:

a. is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to its clients or the public;

b. has failed to pay any judgment rendered against it within 60 days after the judgment has become final;

c. has violated any lawful rule or order of the commissioner or any provision of the laws of this State;

d. has, without just cause, refused or failed to perform services arising under its contracts with clients;

e. has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was held; or

f. is under suspension or revocation in another State.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a certification issued under this act, the commissioner may, in lieu of suspension or revocation, impose a fine upon the third party billing service.

C.17B:27B-24 Violations, penalties.

24. The commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250 nor more than \$5,000 for each day that a third party administrator or third party billing service is in violation of this act. A penalty imposed by the commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a license pursuant to this act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.17B:27B-25 Rules, regulations.

25. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

26. This act shall take effect immediately.

Approved December 13, 2001.

CHAPTER 268

AN ACT concerning State facilities and amending R.S. 30:1-7 and R.S. 30:4-160.

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

1. R.S. 30:1-7 is amended to read as follows:

Institutions, facilities covered by Title 30.

30:1-7. The long-term care facilities, institutions, and psychiatric facilities of this State, within the meaning of this Title, shall include the following, and, as well, any facilities established hereafter for any similar purpose:

Trenton Psychiatric Hospital,
 Greystone Park Psychiatric Hospital,
 Ancora Psychiatric Hospital,
 Senator Garrett W. Hagedorn Psychiatric Hospital,
 Ann Klein Forensic Center,
 North Jersey Developmental Center,
 New Lisbon Developmental Center,
 Woodbine Developmental Center,
 Vineland Developmental Center,
 Woodbridge Developmental Center,
 Hunterdon Developmental Center,
 Arthur Brisbane Child Center at Allaire.

2. R.S.30:4-160 is amended to read as follows:

State hospitals.

30:4-160. The New Jersey State Hospitals, designated in R.S.30:1-7 as psychiatric hospitals, shall include the existing buildings and lands of Ancora Psychiatric Hospital, Greystone Park Psychiatric Hospital, Senator

Garrett W. Hagedorn Psychiatric Hospital, Trenton Psychiatric Hospital and the Ann Klein Forensic Center, and all grounds or places where the patients thereof may from time to time be maintained, kept, housed or employed.

3. This act shall take effect immediately.

Approved December 13, 2001.

CHAPTER 269

AN ACT changing the membership of the Advisory Council on Community Affairs and amending P.L.1966, c.293.

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

1. Section 11 of P.L.1966, c.293 (C.52:27D-11) is amended to read as follows:

C.52:27D-11 Advisory council on community affairs; membership; terms; vacancies.

11. The Advisory Council on Community Affairs shall consist of the commissioner, as chairman ex officio, and 12 other members appointed by the Governor, with the advice and consent of the Senate, as follows:

(a) One member shall be the mayor of a municipality of this State having a population of less than 20,000 inhabitants at the time of his or her appointment;

(b) One member shall be the mayor of a municipality of this State having a population of between 20,000 and 50,000 inhabitants at the time of his or her appointment;

(c) One member shall be the mayor of a municipality of this State having a population of 50,000 or more inhabitants at the time of his or her appointment;

(d) Three members shall be appointed at large from among the citizens of this State;

(e) One member shall be appointed from among the membership of each of the following organizations:

(i) The New Jersey Association of Boards of Chosen Freeholders;

(ii) The New Jersey State League of Municipalities;

(iii) The New Jersey Federation of District Boards of Education;

(iv) The Municipal Managers Association;

(v) The New Jersey Federation of Planning Officials; and

(vi) The New Jersey Association of Professional Code Inspectors.

Of the members first to be appointed three shall be appointed for a term of one year each, three for a term of two years each, three for a term of three years each and three for a term of four years each. The successors of the members first appointed shall be appointed for four-year terms. Vacancies other than by expiration of terms shall be filled for the unexpired term.

The Director of the Office of Community Services shall serve as secretary to the council.

2. This act shall take effect immediately and apply to the next expiration of the term of an at large member of the council.

Approved December 26, 2001.

CHAPTER 270

AN ACT concerning vacation leave of certain public employees having duties related to a state of emergency and amending N.J.S.11A:6-2 and 11A:6-3.

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

1. N.J.S.11A:6-2 is amended to read as follows:

Vacation leave; full-time State employees.

11A:6-2. Vacation leave; full-time State employees. Vacation leave for full-time State employees in the career and senior executive service shall be at least:

- a. Up to one year of service, one working day for each month of service;
- b. After one year and up to five years of continuous service, 12 working days;
- c. After five years and up to 12 years of continuous service, 15 working days;
- d. After 12 years and up to 20 years of continuous service, 20 working days;
- e. Over 20 years of continuous service, 25 working days;
- f. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken by an employee in the career and senior executive service in a given year because of duties directly related to a state

of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining; and

g. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken by an employee in the unclassified service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining. Nothing in this subsection shall affect any rights to vacation leave which is subject to collective negotiation or collective bargaining.

2. N.J.S.11A:6-3 is amended to read as follows:

Vacation leave; full-time political subdivision employees.

11A:6-3. Vacation leave; full-time political subdivision employees. Vacation leave for full-time political subdivision employees shall be at least:

- a. Up to one year of service, one working day for each month of service;
- b. After one year and up to 10 years of continuous service, 12 working days;
- c. After 10 years and up to 20 years of continuous service, 15 working days;
- d. After 20 years of continuous service, 20 working days; and

e. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining

3. This act shall take effect immediately.

Approved December 26, 2001.

CHAPTER 271

AN ACT authorizing certain excused absences by pupils and supplementing chapter 36 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:36-33 Pupils serving as district board of election members, excused absence.

1. Notwithstanding any law, rule or regulation to the contrary, any pupil of any public school who serves as a member of a district board of election on the day of any election, pursuant to R.S.19:6-1 et seq., and attends required instructional sessions related to such membership, pursuant to R.S.19:50-1 et seq., shall have his or her absence for those reasons recorded as excused absences on that pupil's attendance record or on that of any group or class of which the pupil is a member upon the presentation of such documentation as the superintendent or administrative principal, as the case may be, deems necessary to prove the pupil served as a member of a district board on the day of an election or attended required instructional sessions.

2. This act shall take effect immediately.

Approved December 26, 2001.

CHAPTER 272

AN ACT concerning the Emergency Services Length of Service Award Program and amending and supplementing P.L.1997, c.388.

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

1. Section 6 of P.L.1997, c.388 (C.40A:14-188) is amended to read as follows:

C.40A:14-188 Provision of length of service award program not required; program requirements.

6. No emergency service organization shall be required to provide a length of service award for its active volunteer members pursuant to the provisions of this act. Any length of service award provided to an active volunteer member shall be governed by the provisions of this act. No length

of service award program shall be provided under the provisions of this act unless the following requirements are met:

a. An active volunteer member shall be eligible to participate in a length of service award program immediately upon the commencement of the active volunteer member's performance of active emergency services in any emergency service organization, and shall be eligible to vest in any length of service award program provided under the provisions of this act if the active volunteer member has completed at least five years of emergency service in any emergency service organization in the State

b. Under a length of service award program, a year of active emergency service commencing after the establishment of the program shall be credited for each calendar year in which an active volunteer member accumulates a number of points that are granted in accordance with a schedule adopted by the sponsoring agency. The program shall provide that points shall be granted for activities designated by the sponsoring agency, which activities may include the following:

- (1) Training courses;
- (2) Drills;
- (3) Sleep-in or standby. A "standby" means line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories;
- (4) Completion of a one-year elected or appointed position in the organization;
- (5) Election as a delegate to an emergency service convention;
- (6) Attendance at official meetings of the sponsoring agency;
- (7) Participation in emergency responses; or
- (8) Miscellaneous activities including participation in inspections and other non-emergency fire, first aid or rescue activities not otherwise listed.

c. If provided for in the enabling ordinance or resolution adopted pursuant to section 3 of P.L. 1997, c. 388 (C.40A:14-185), a length of service award program may provide for the crediting of not more than 10 years of active emergency service periods prior to the establishment of such a program. Such credit may be granted to the active volunteer over as many years as deemed appropriate by the sponsoring agency, except that the total amount contributed in any one year shall not exceed the maximum amount allowed by law to be contributed by a sponsoring agency.

d. To provide credit for service prior to the establishment of the service award program, pursuant to subsection c. of this section, each sponsoring agency shall review the prior membership rosters of the emergency service organizations subject to the program to determine the number of years' credit for each participant who is entitled to credit. In making the analysis, the standards for active service set forth in subsection b. of this section and

adopted by the sponsoring agency shall be used. The amount of the contribution provided to participants for past service may differ from the amount of the current contribution provided for under the plan. The definition of years of active emergency service shall be determined by the bylaws of the participating emergency service organization at the time service was earned. Approval for such prior service shall require certification by the duly designated persons, as determined and defined by the sponsoring agency of the participating emergency service organization. If an active volunteer member requests credit for service in more than one volunteer participating emergency service organization, each such emergency service organization shall provide a certification for the appropriate number of years. That credit may be awarded at the discretion of the sponsoring agency of the plan in which the volunteer member seeks to apply the credit. In no event, however, shall a participant be credited for the same year of active emergency service in more than one service award program.

e. (Deleted by amendment, P.L.2001, c.272).

f. An active volunteer member whose name does not appear on the approved certification list or who is denied credit for service prior to the establishment of the service award program may appeal within 30 days of posting of the list or within 30 days of denial of past service credit. The appeal shall be in writing and mailed to the clerk or secretary of the governing body of that local government unit, which shall investigate the appeal. The decision of a participating emergency service organization shall be subject to appropriate judicial review.

C.40A:14-194.1 Additional penalties, fines.

2. a. In addition to any other penalties provided by law, any person who knowingly violates any provision of P.L.1997, c.388 (C.40A:14-183 et al.) shall:

- (1) be subject to a fine of no less than \$100 and no more than \$1,150;
- (2) forfeit all benefits to which he may be entitled under P.L.1997, c.388 (C.40A:14-183 et al.); and
- (3) be prohibited from serving in a volunteer or paid position with any emergency service organization in this State.

b. In addition to the penalties provided for in subsection a. of this section, any person who knowingly misrepresents the credit earned by a volunteer as provided for in section 6 of P.L.1997, c.388 (C.40A:14-188) or knowingly includes an individual on an annual certification list, as provided for in section 9 of P.L.1997, c.388 (C.40A:14-191), who is not a qualified member of an emergency service organization, shall be subject to

a fine of no less than \$100 and no more than \$1,150 for each individual whose credit or status was misrepresented.

3. This act shall take effect immediately.

Approved December 26, 2001.

CHAPTER 273

AN ACT concerning voluntary contributions through gross income tax returns to Literacy Volunteers of America - New Jersey, supplementing chapter 9 of Title 54A of the New Jersey Statutes.

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

C.54A-9-25.20 "Literacy Volunteers of America - New Jersey Fund;" tax return contribution.

1. a. There is established in the Department of the Treasury a special fund to be known as the "Literacy Volunteers of America - New Jersey Fund."

b. Each taxpayer shall have the opportunity to indicate on the taxpayer's New Jersey gross income tax return that a portion of the taxpayer's tax refund or an enclosed contribution shall be deposited in the special fund.

c. 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 "Literacy Volunteers of America - New Jersey Fund."

d. The Legislature shall annually appropriate all funds deposited in the "Literacy Volunteers of America - New Jersey Fund" established pursuant to this section to the Literacy Volunteers of America - New Jersey, Inc., for the purposes of literacy training, technical assistance, and program development.

2. This act shall take effect immediately and apply to taxable years beginning on or after January 1 next following enactment.

Approved December 26, 2001.

CHAPTER 274

AN ACT concerning fines for violation of municipal ordinances and amending R.S.40:49-5.

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

1. R.S.40:49-5 is amended to read as follows:

Penalties for violations of municipal ordinances.

40:49-5. The governing body may prescribe penalties for the violation of ordinances it may have authority to pass, by one or more of the following: imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not exceeding \$1,250; or by a period of community service not exceeding 90 days.

The governing body may prescribe that for the violation of any particular ordinance at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100.00. The court before which any person is convicted of violating any ordinance of a municipality shall have power to impose any fine, term of imprisonment, or period of community service not less than the minimum and not exceeding the maximum fixed in such ordinance.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

Any municipality which chooses not to impose an additional fine upon a person for a repeated violation of any municipal ordinance may waive the additional fine by ordinance or resolution.

Any person convicted of the violation of any ordinance may, in the discretion of the court by which he was convicted, and in default of the payment of any fine imposed therefor, be imprisoned in the county jail or place of detention provided by the municipality, for any term not exceeding 90 days, or be required to perform community service for a period not exceeding 90 days.

2. This act shall take effect immediately.

Approved December 26, 2001.

CHAPTER 275

AN ACT concerning certain fees in the Special Civil Part and amending P.L.1991, c.177.

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

1. Section 15 of P.L.1991, c.177 (C.22A:2-37.2) is amended to read as follows:

C.22A:2-37.2 Fees to officers designated by Assignment Judge to serve process.

15. a. From the fees set forth in section 14 of P.L.1991, c.177 (C.22A:2-37.1), the clerk of the Special Civil Part of the Superior Court, Law Division, shall pay to officers designated by the Assignment Judge to serve process the following fees:

(1) Serving summons, notice or third party complaint on one defendant	\$ 3.00
on every additional defendant	\$ 2.00
(2) Reserving summons or other original process on any defendant	\$ 3.00
(3) Warrant to arrest, capias, or commitment, for each defendant served	\$15.00
(4) Serving writ and summons in replevin, taking bond and any inventory, against one defendant	\$ 6.00
on every additional defendant	\$ 2.00
(5) Serving writ in replevin when issued subsequent to service of summons, against one defendant	\$ 5.00
on every additional defendant	\$ 2.00
(6) Serving order for possession in replevin	\$ 4.00
(7) Serving writ of attachment and making inventory, one defendant	\$ 4.00
on every additional defendant	\$ 2.00
(8) Serving and executing warrant for possession in tenancy	\$10.00
(9) Every execution, or any order in the nature of an execution, on a judgment, for each defendant	\$ 2.00
(10) Every wage execution to a federal agency, additional fee	\$ 4.00

b. For every mile of travel in serving or executing any process, writ, order, execution, notice or warrant, the distance to be computed by counting the number of miles in and out, by the most direct route from the place where process is issued, at the same rate per mile set by the State for other State employees and the total mileage fee rounded upward to the nearest dollar.

c. In addition to the foregoing, the following fees for officers of the Special Civil Part shall be taxed in the costs and collected on execution, writ of attachment or order in the nature of any execution on any final judgment, or on a valid and subsisting levy of an execution or attachment which may be the effective cause in producing payment or settlement of a judgment or attachment:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| (1) For advertising property under execution or any order | \$10.00 |
| (2) For selling property under execution or any order | \$10.00 |
| (3) On every dollar collected on execution, writ of attachment, or any order, | \$0.10. |
| (4) In the event a judgment is vacated for any reason after a court officer has made a levy and thereafter the judgment is reinstated or the case is settled, the dollarage due the court officer on payment of the judgment amount or settlement amount again shall be taxed in the costs and collected | |

2. This act shall take effect immediately.

Approved December 26, 2001.

CHAPTER 276

AN ACT concerning certain motor vehicle records and amending R.S.39:3-28.

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

1. R.S. 39:3-28 is amended to read as follows:

Licenses and registrations indexed; certified copies of applications as evidence; fees; destruction of applications and copies.

39:3-28. The director shall cause all applications for registration and drivers' licenses to be indexed, and any original application or copy thereof certified to be a true copy under the hand of the director shall be received as

evidence in any court to prove the facts contained therein. For each uncertified copy so issued the director shall collect a fee of \$8 and for each certified copy so issued the director shall collect a fee of \$10. The indexing and copying of these applications shall meet the standards and requirements established in regulation by the Secretary of State for the maintenance and preservation of records.

The director may destroy all records of registration certificates or drivers' licenses and their indices after having made copies of such records in accordance with standards and requirements established in regulation by the Secretary of State for the maintenance and preservation of records. Such copies made in accordance with standards and requirements established in regulation by the Secretary of State for the maintenance and preservation of records may be destroyed when they have been on file in the office of the director for a period of three years after the date of expiration of the registration certificates and drivers' licenses.

2. This act shall take effect immediately.

Approved December 26, 2001.

CHAPTER 277

AN ACT concerning public movers and warehousemen and amending P.L.1981, c.311.

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

1. Section 10 of P.L.1981, c.311 (C.45:14D-10) is amended to read as follows:

C.45:14D-10 Issuance of receipt, bill of lading, electronic warehouse receipt permitted, certain.

10. Every person engaged in the business of storing or moving household goods, office goods, or special commodities for transportation in intrastate commerce shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof in accordance with the provisions of chapters 3, 4, 5, and 7 of Title 12A of the New Jersey Statutes. Notwithstanding any other provision of law, a receipt issued pursuant to this section shall not be denied legal effect solely because it is in electronic form, provided that both parties have affirmatively agreed to the electronic form of the receipt, the issuer affirmatively provides to the holder the receipt in

an accessible form which is capable of being received, retained and accurately reproduced by the holder, and the receipt contains all legally required information.

2. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 278

AN ACT concerning the employment of certain retired members of the Public Employees' Retirement System of New Jersey and amending P.L.1966, c.217.

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

1. Section 27 of P.L.1966, c.217 (C.43:15A-57.2) is amended to read as follows:

C.43:15A-57.2 Reemployment of retired former member.

27. a. Except as provided in subsection b. of this section, if a former member of the State Employees' Retirement System or the retirement system, who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be re-enrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of re-enrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former membership shall be paid if his death shall occur during the period of such re-enrollment.

Upon subsequent retirement of such member, his former retirement allowance shall be reinstated together with any optional selection, based on his former membership. In addition, he shall receive an additional retirement allowance based on his subsequent service as a member computed in accordance with applicable provisions of chapter 84 of the laws of 1954; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his final

compensation than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement, but shall not be less than the death benefit that was applicable to his former retirement.

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed again by: (1) an employer or employers in a position or positions for which the aggregate compensation does not exceed \$15,000 per year; or (2) if the compensation exceeds \$10,000 per year, by an employer that is a public institution of higher education as defined in N.J.S.18A:62-1 in a teaching staff position. The Director of the Division of Pensions and Benefits may from time to time adjust the amount in paragraph (1) of this subsection. This adjustment shall be $\frac{3}{5}$ of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the director.

2. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 279

AN ACT concerning the qualifications for the appointment of firefighters and supplementing Title 40A of the New Jersey Statutes.

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

C.40A:14-12.4 Appointment of firefighters under certain circumstances.

1. a. Notwithstanding the provisions of N.J.S.40A:14-12 to the contrary, a municipal appointing authority may appoint to a uniformed firefighting position any person who is over 35 years of age if that person was placed on a civil service eligible list for appointment as a member or officer of a paid fire department or force prior to February 25, 1997 and was appointed by a municipal appointing authority prior to June 30, 1998.

b. Notwithstanding the provisions of P.L.1944, c.255 (C.43:16A-1 et seq.) to the contrary, the Board of Trustees of the Police and Firemen's Retirement System shall accept as a member of the retirement system any

firefighter, otherwise eligible for membership, who was appointed in accordance with the provisions of subsection a. of this section.

2. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 280

AN ACT concerning license plates for amateur radio operators and amending P.L.1968, c.247.

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

1. Section 1 of P.L.1968, c.247 (C.39:3-27.5) is amended to read as follows:

C.39:3-27.5 Amateur radio call letter registration plates.

1. The Director of the Division of Motor Vehicles shall cause to be issued to applicants who hold amateur radio licenses issued by the Federal Communications Commission, registration plates for motor vehicles owned or leased by the applicants bearing the term "amateur radio" and the amateur radio call letters of the respective applicants. The director, upon request, shall cause to be issued duplicate plates, with such marks as the director may deem appropriate to distinguish them from the original plates, for any additional motor vehicle which an applicant may register.

2. Section 2 of P.L.1968, c.247 (C.39:3-27.6) is amended to read as follows:

C.39:3-27.6 Application; form, fee.

2. Application for registration of such motor vehicles and for the issuance of such amateur radio call letter registration plates shall be made in such form and accompanied by such proof as the director shall prescribe. An additional fee of \$15 shall be paid for the issuance or replacement of any such plates.

3. This act shall take effect on the 31st day after enactment.

Approved December 27, 2001.

CHAPTER 281

AN ACT concerning the awarding of county college contracts and amending P.L.1982, c.189.

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

1. Section 3 of P.L.1982, c.189 (C.18A:64A-25.3) is amended to read as follows:

C.18A:64A-25.3 Purchases, contracts and agreements not requiring advertising.

3. a. Any purchase, contract or agreement for the performance of any work or the furnishing or hiring of materials or supplies, the cost or price of which, together with any sums expended for the performance of any work or services in connection with the same project or the furnishing of similar materials or supplies during the same fiscal year, paid with or out of college funds, does not exceed the total sum of \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of this section in any fiscal year may be made, negotiated and awarded by a contracting agent, when so authorized by resolution of the board of trustees of the county college, without public advertising for bids and bidding therefor.

b. Commencing January 1, 2003 and every two years thereafter, the Governor, in consultation with the Department of the Treasury, shall adjust the threshold amount set forth in subsection a. of this section in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York and Northeastern New Jersey and the Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which it is reported.

c. Any purchase, contract or agreement made pursuant to this section may be awarded for a period of 24 consecutive months, notwithstanding that such 24 -month period does not coincide with the fiscal year.

2. Section 5 of P.L.1982, c.189 (C.18A:64A-25.5) is amended to read as follows:

C.18A:64A-25.5 Exceptions to requirement for advertising.

5. Any purchase, contract or agreement of the character described in section 4 may be made, negotiated or awarded by the county college by resolution at a public meeting of its board of trustees without public advertising for bids or bidding therefor if:

a. The subject matter thereof consists of:

- (1) Professional services; or
- (2) Extraordinary unspecifiable services and products which cannot reasonably be described by written specifications, subject however, to procedures consistent with open public bidding whenever possible; or
- (3) Materials or supplies which are not available from more than one potential bidder, including without limitation materials or supplies which are patented or copyrighted; or
- (4) The doing of any work by employees of the county college; or
- (5) The printing of all legal notices and legal briefs, records and appendices to be used in any legal proceeding to which the county college may be a party; or
- (6) Textbooks, copyrighted materials, student produced publications and services incidental thereto, library materials including without limitation books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials and specialized library services; or
- (7) Food supplies and services including food supplies and management contracts for student centers, dining rooms and cafeterias; or
- (8) The supplying of any product or the rendering of any service by the public utility which is subject to the jurisdiction of the Board of Public Utilities, in accordance with tariffs and schedules of charges made, charged and exacted, filed with said board; or
- (9) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such services; or
- (10) Specialized machinery or equipment of a technical nature which will not reasonably permit the drawing of specifications, and the procurement thereof without advertising is in the public interest; or
- (11) Insurance, including the purchase of insurance coverage and consulting services, which exceptions shall be in accordance with the requirements for extraordinary unspecifiable services; or
- (12) Publishing of legal notices in newspapers, as required by law; or
- (13) The acquisition of artifacts or other items of unique intrinsic, artistic or historic character; or
- (14) The collection of amounts due on student loans, including without limitation loans guaranteed by or made with funds of the United States of America; or
- (15) Professional consulting services; or

(16) Entertainment, including without limitation theatrical presentations, band and other concerts, movies and other audiovisual productions; or

(17) Contracts employing funds created by student activities fees charged to students or otherwise raised by students, not under the direct control of the college and expended by student organizations; or

(18) Printing, including without limitation catalogs, yearbooks and course announcements; or

(19) Providing goods or services for the use, support or maintenance of proprietary computer hardware, software peripherals and system development for the hardware; or

(20) Personnel recruitment and advertising, including without limitation advertising seeking student enrollment; or

(21) Educational supplies, books, articles of clothing and other miscellaneous articles purchased by a county college bookstore, or by a service or management company under contract with a county college to operate a county college book store for resale to college students and employees; or

(22) Purchase or rental of graduation caps and gowns and award certificates or plaques; or

(23) Expenses for travel or conferences; or

(24) Items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract terms or conditions.

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

c. The county college has advertised for bids pursuant to section 4 of P.L.1982, c.189 (C.18A:64A-25.4) on two occasions and (i) has received no bids on both occasions in response to its advertisement, or (ii) has rejected such bids on two occasions because the county college has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the county college prior to the advertising therefor, or have not been independently arrived at in open competition, or (iii) on one occasion no bids were received pursuant to (i) and on one occasion all bids were rejected pursuant to (ii), in whatever sequence; any such contract or agreement may then be negotiated by a two-thirds affirmative vote of the authorized membership of the board of trustees authorizing such contract or agreement; provided, however, that:

(1) A reasonable effort is made by the contracting agent to determine that the same or equivalent materials or supplies at a cost which is lower than the negotiated price are not available from any agency or authority of

the United States, the State of New Jersey or from the county in which the county college is located, or any municipality in close proximity to the county college;

(2) The terms, conditions, restrictions and specifications set forth in the negotiated contract or agreement are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1982, c.189 (C.18A:64A-25.4); and

(3) Any relevant amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1982, c.189 (C.18A:64A-25.4), shall be stated in the resolution awarding such contract or agreement; provided, further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the county college shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate and afford each such bidder a reasonable opportunity to negotiate, but the county college shall not award such contract or agreement unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such work, materials, supplies or services.

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

3. Section 6 of P.L.1982, c.189 (C.18A:64A-25.6) is amended to read as follows:

C.18A:64A-25.6 Emergency purchases and contracts.

6. Any purchase, contract, or agreement may be made, negotiated or awarded by a county college without public advertising for bids and bidding therefor, notwithstanding that the cost or contract price will exceed \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), when an emergency affecting the health, safety or welfare of occupants of college property requires the immediate delivery of the materials or supplies or the performance of the work, provided that such purchases, contracts or agreements are awarded or made in the following manner:

a. A written requisition for the performance of such work or the furnishing of materials or supplies, certified by the employee in charge of the building, facility or equipment where the emergency occurred, is filed with the contracting agent or his deputy in charge, describing the nature of the emergency, the time of its occurrence, and the need for invoking this section. The contracting agent, or his deputy in charge, being satisfied that the emergency exists, is hereby authorized to award a contract for said work, materials or supplies.

b. Upon the furnishing of such work, materials or supplies in accordance with the terms of the contract or agreement, the contractor furnishing such work, materials or supplies shall be entitled to be paid therefor and the county college shall be obligated for said payment.

c. The board of trustees may prescribe rules and procedures to implement the requirements of this section.

4. Section 10 of P.L.1982, c.189 (C.18A:64A-25.10) is amended to read as follows:

C.18A:64A-25.10 Joint purchases by county colleges, municipalities or counties; authority.

10. The board of trustees of two or more county colleges may provide jointly by agreement for the purchasing of work, materials or supplies for their respective colleges, or one or more county colleges may provide for such purchase by joint agreement with the governing bodies of any municipality or of the county within whose boundaries any such college or colleges is or are wholly or partly located and may enter agreements with other institutions of higher education or with other units of government pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

5. Section 25 of P.L.1982, c.189 (C.18A:64A-25.25) is amended to read as follows:

C.18A:64A-25.25 Cost over threshold level; separate plans and specifications; bids; advertisement; award of contract; payment to subcontractor.

25. In the preparation of plans and specifications for the construction, alteration or repair of any building by a county college, when the entire cost of the work and materials will exceed \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), separate plans and specifications may be prepared for each of the following to include all work and materials related thereto or to be performed or furnished in connection therewith:

- (a) The plumbing and gas fitting work;
- (b) The heating and ventilating systems and equipment;

- (c) The electrical work, including any electrical power plants;
- (d) The structural steel and ornamental iron work;
- (e) All other work and materials required for the completion of the project.

The contracting agent shall advertise for and receive in the manner provided by law (1) separate bids for each of the foregoing categories (a) through (e), or (2) bids for all work and materials required to complete the entire project, if awarded as a single contract, or (3) both. All bids submitted shall set forth the name or names of, and evidence of performance security from, all subcontractors to whom the bidder will subcontract the work described in the foregoing categories (a) through (e).

Contracts shall be awarded to the lowest responsible bidder. In the event that a contract is advertised in accordance with (3) above, the contract shall be awarded in the following manner: if the sum total of the amounts bid by the lowest responsible bidder for each category (a) through (e) is less than the amount bid by the lowest responsible bidder for all the work and materials, the county college shall award separate contracts for each of such categories to the lowest responsible bidder therefor, but if the sum total of the amount bid by the lowest responsible bidder for each category is not less than the amount bid by the lowest responsible bidder for all the work and materials, the county college shall award a single contract to the lowest responsible bidder for all of such work and materials. In every case in which a contract is awarded under (2) above, all payments required to be made under the contract for work and materials supplied by a subcontractor shall, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor.

6. Section 27 of P.L.1982, c.189 (C.18A:64A-25.27) is amended to read as follows:

C.18A:64A-25.27 Authorization; resolution; method.

27. Any county college may, by resolution of its board of trustees, authorize the sale in the following manner of its personal property not needed for college purposes:

a. If the estimated fair value of the property to be sold exceeds \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c. 189 (C. 18A:64A-25.3) in any one sale and the property does not consist of perishable goods, it shall be sold at public sale to the highest bidder.

b. Notice of the date, time and place of the public sale, together with a description of the items to be sold and the conditions of sale shall be

published once in a legal newspaper. Such sales shall be held not less than seven nor more than 14 days after the publication of the notice thereof.

c. Personal property may be sold to the United States, the State of New Jersey, another county college or to any body politic by private sale without advertising for bids.

d. If no bids are received, the property may then be sold at private sale without further publication or notice thereof but in no event at less than the estimated fair value; or the county college may, if it so elects, reoffer the property at public sale. As used herein, "estimated fair value" means the market value of the property if sold by a willing seller to a willing buyer less the cost to the college of continuing to store or maintain such property.

e. A county college may reject all bids if it determines such rejection to be in the public interest. In any case in which the college has rejected all bids, it may readvertise such personal property for a subsequent public sale. If it elects to reject all bids at a second public sale pursuant to this section, it may then sell such personal property without further publication or notice thereof at private sale, provided that in no event shall the negotiated price at the private sale be less than the amount of the highest bid rejected at the preceding two public sales, and provided further that in no event shall the terms or conditions of sale be changed or amended.

f. If the estimated fair value of the property to be sold does not exceed \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3) in any one sale or the property consists of perishable goods, it may be sold at private sale without advertising for bids.

g. Notwithstanding the provisions of this section, by resolution of the board of trustees, a purchasing agent may include a sale of personal property no longer needed for county college purposes as part of specifications to offset the price of a new purchase.

7. Section 28 of P.L.1982, c.189 (C.18A:64A-25.28) is amended to read as follows:

18A:64A-25.28 Duration of certain contracts.

28. Duration of certain contracts. A county college may only enter into a contract exceeding 24 consecutive months for the:

a. Supplying of:

(1) Fuel for heating purposes for any term not exceeding in the aggregate three years; or

(2) Fuel or oil for use in automobiles, autobuses, motor vehicles or equipment for any term not exceeding in the aggregate three years; or

- b. Plowing and removal of snow and ice for any term not exceeding in the aggregate three years; or
- c. Collection and disposal of garbage and refuse for any term not exceeding in the aggregate three years; or
- d. Providing goods or services for the use, support or maintenance of proprietary computer hardware, software peripherals and system development for the hardware for any term of not more than five years; or
- e. Insurance, including the purchase of insurance coverages, insurance consultant or administrative services, and including participation in a joint self-insurance fund, risk management programs or related services provided by a county college insurance group, or participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6, for any term of not more than three years; or
- f. Leasing or service of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind for any term not exceeding in the aggregate five years; or
- g. Supplying of any product or rendering of any service by a company providing voice, data, transmission or switching services, for a term not exceeding five years; or
- h. The providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms and cafeterias, for a term not exceeding three years; or
- i. The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not exceeding 10 years; provided that a contract is entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings; or
- j. Any single project for the construction, reconstruction or rehabilitation of a public building, structure or facility, or a public works project including the retention of the services of an architect or engineer in connection with the project, for the length of time necessary for the completion of the actual construction; or
- k. The management and operation of bookstores for a term not exceeding five years; or
- l. Custodial or janitorial services for any term not exceeding in the aggregate three years; or
- m. Child care services for a term not exceeding three years; or
- n. Security services for a term not exceeding three years; or

- o. Ground maintenance services for a term not exceeding three years;
- or
- p. Laundering, dry-cleaning or rental of uniforms for a term not exceeding three years.

All multi-year leases and contracts entered into pursuant to this section, except contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation and authorized pursuant to subsection i. of this section, and except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a county college insurance group, and participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), shall contain a clause making them subject to the availability and appropriation annually of sufficient funds to meet the extended obligation or contain an annual cancellation clause.

8. This act shall take effect on the first day of the third month after enactment and shall be applicable to purchases, contracts or agreements for which public advertising for bids commenced on or after the effective date of this act.

Approved December 27, 2001.

CHAPTER 282

AN ACT concerning certain employee leasing companies and amending P.L.2001, c.260.

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

1. Section 9 of P.L.2001, c.260 (C.34:8-75) is amended to read as follows:

C.34:8-75 Inapplicability to temporary help service firms, unit operating as cooperative.

9. a. The provisions of this act shall not apply to temporary help service firms, as defined in section 1 of P.L.1989, c.331 (C.34:8-43), or farm labor crew leaders who are subject to P.L.1971, c.192 (C.34:8A-7 et seq.).

b. The provisions of this act shall not apply to an employing unit operating as a cooperative subject to the provisions of Subchapter T of the federal Internal Revenue Code of 1986, 26 U.S.C.s.1381 et seq.

c. Nothing in this act shall exempt either a client company or the covered employees leased to a client company from any applicable State, local, or federal licensing, registration or certification statutes and regulations.

d. Any covered employee who must be licensed, registered or certified, according to law, shall be treated as a covered employee of the client company for the purposes of the license, registration or certification.

e. The provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) shall remain applicable in all respects to those client companies of the employee leasing company who participate in public construction contracts as set forth in that act.

2. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 283

AN ACT concerning the acquisition of land for recreation and conservation purposes and supplementing P.L.1957, c.183 (C.40:14B-1 et seq.), Title 18A of the New Jersey Statutes, and chapter 12 of Title 40A of the New Jersey Statutes.

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

C.40:14B-20.3 Use of municipal utilities authority funds for joint acquisition of land for recreation, conservation purposes.

1. a. A municipal utilities authority may expend any of its funds for the joint acquisition of land for recreation and conservation purposes with a municipality, notwithstanding the participation of any other public entity in the purchase, provided that the transaction does not violate any federal or State law and has a direct nexus to, and substantially furthers the core mission of, the municipal utilities authority.

b. Nothing in this section shall interfere with or limit the oversight authority of any State agency over a municipal utilities authority.

c. For the purposes of this section, "recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed

protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both.

C.18A:20-2.2 Use of school district surplus funds for joint acquisition of land for recreation, conservation purposes.

2. a. A school district may expend any of its surplus funds for the joint acquisition of land for recreation and conservation purposes with a municipality, notwithstanding the participation of any other public entity in the purchase, provided that the transaction does not violate any federal or State law and has a direct nexus to, and substantially furthers the core mission of, the school district.

b. Nothing in this section shall interfere with or limit the oversight authority of any State agency over a school district.

c. For the purposes of this section, "recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both.

C.40A:12-10.1 Contracts for joint acquisition of land for recreation, conservation purposes.

3. a. A municipality may contract with another municipality, a municipal utilities authority, or a school district for the purpose of acquiring land for recreation and conservation purposes, provided that the transaction does not violate any federal or State law and has a direct nexus to, and substantially furthers the core mission of, the respective municipal utilities authority or school district. Title to any land so acquired shall be taken in the manner provided by agreement between the participating entities. The expense of acquisition and maintenance of the land shall be divided in such manner as the parties shall agree upon.

b. Nothing in this section shall interfere with or limit the oversight authority of any State agency over a municipal utilities authority or school district.

c. For the purposes of this section, "recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both.

4. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 284

AN ACT concerning the State Health Benefits Program and supplementing P.L.1961, c.49 (C.52:14-17.25 et seq.).

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

C.52:14-17.29g Notice to enrollees in State Health Benefits Program managed care plans if primary care physician is terminated from plan.

1. a. The State Health Benefits Commission shall ensure that every contract purchased by the commission on or after the effective date of this act provides that if an enrollee's or member's primary care physician's contract as a participating physician in a health maintenance organization or NJ PLUS will be terminated, the health maintenance organization or NJ PLUS, as appropriate, shall provide the enrollee or member with 90-days notice of the termination. If 90-days notice cannot be provided because the termination will occur prior to the end of the 90-day period, the health maintenance organization or NJ PLUS shall notify the enrollee or member as soon as the health maintenance organization or NJ PLUS has knowledge of the termination.

b. Notwithstanding the provisions of any policy governing open enrollment to the contrary, an enrollee or member who has been notified by a health maintenance organization or NJ PLUS pursuant to this section may change his coverage to another health benefits plan under the State Health Benefits Program upon receiving notice that his primary care physician will no longer be a participating physician with the health maintenance organization or NJ PLUS, in which the person is currently enrolled.

2. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 285

AN ACT concerning tuition in certain sending-receiving school district relationships and amending N.J.S.18A:38-19.

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

1. N.J.S.18A:38-19 is amended to read as follows:

Tuition of pupils attending schools in another district.

18A:38-19. a. Whenever the pupils of any school district are attending public school in another district, within or without the State, pursuant to this article, the board of education of the receiving district shall determine a tuition rate to be paid by the board of education of the sending district to an amount not in excess of the actual cost per pupil as determined under rules prescribed by the commissioner and approved by the State board, and such tuition shall be paid by the custodian of school moneys of the sending district out of any moneys in his hands available for current expenses of the district upon order issued by the board of education of the sending district, signed by its president and secretary, in favor of the custodian of school moneys of the receiving district.

b. Notwithstanding the provisions of subsection a. of this section, whenever the pupils of any school district are attending public school in an Abbott district as defined pursuant to section 3 of P.L.1996, c.138 (C.18A:7F-3), any expenditures associated with amounts appropriated to the Abbott district as Abbott v. Burke parity remedy aid or additional Abbott v. Burke State aid shall not be included in the actual cost per pupil for the calculation of the tuition to be paid by the sending district.

2. This act shall take effect immediately and shall first apply to the 2000-2001 school year.

Approved December 27, 2001.

CHAPTER 286

AN ACT concerning banks serving as custodians or fiscal agents of certain State assets and amending and supplementing P.L.1977, c.281 and P.L.1954, c.22.

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

1. Section 1 of P.L.1954, c.22 (C.52:18A-8.1) is amended to read as follows:

C.52:18A-8.1 Fiscal agent or custodian for funds and other assets; agreements.

1. a. The State Treasurer is hereby authorized and empowered to enter into agreement from time to time, and on the terms and for the compensation, if any, the State Treasurer deems appropriate, with any one or more of the national banks and the banks authorized by this State to carry on a banking business, which the State Treasurer may select, to act as fiscal agent

for the State or as custodian for funds, securities, or other assets of the State and as fiscal agent or as custodian for any pension agency, fund or system maintained in whole or in part by the State. Each bank selected by the State Treasurer to act as custodian or fiscal agent shall have a physical presence in this State in the form of a principal office or branch office and shall employ New Jersey residents. Each bank selected by the State Treasurer may use recognized depositories or clearinghouses for the funds, securities or other assets of the State or may use other banks as sub-custodians or sub-fiscal agents for these assets, provided that in every case each bank selected by the State Treasurer shall retain primary responsibility for these assets.

b. If a bank selected by the State Treasurer delegates its responsibilities as custodian or fiscal agent, or both, to a sub-custodian or sub-fiscal agent, the sub-custodian or sub-fiscal agent shall be responsible for the services delegated to it to the same degree as the primary custodian or primary fiscal agent and shall maintain accounting records and be otherwise held accountable to the same degree of fiduciary duty and responsibility as the appointing primary custodian or fiscal agent.

c. A bank selected by the State Treasurer as a primary custodian or fiscal agent which delegates its responsibilities as custodian or fiscal agent, or both, to a sub-custodian or sub-fiscal agent, shall not be relieved of its fiduciary duties and responsibilities.

C.52:18A-8.1a Definitions used in C.52:18A-8.1.

2. As used in section 1 of P.L.1954, c.22 (C.52:18A-8.1):

"Branch office" means an office at a fixed location other than a principal office, however designated, at which any business that may be conducted in a principal office of a bank may be transacted.

"Clearinghouse" means an association of banks or other payors regularly settling mutual claims, accounts and other items such as securities, payments and income.

"Custodian," "primary custodian," "fiscal agent" and "primary fiscal agent" means a bank which is selected by the State Treasurer to perform fiduciary functions in the maintenance of public trust funds and assets.

"Depository" means a separately incorporated bank or association of banks which serves as a temporary trustee for securities on behalf of a custodian, sub-custodian, fiscal agent or sub-fiscal agent.

"Principal office" means the headquarters of a bank which is its principal place of business.

"Sub-custodian" or "sub-fiscal agent" means a bank, located in any state or country, to which a primary custodian or primary fiscal agent may delegate its duties and responsibilities.

3. Section 1 of P.L.1977, c.281 (C.52:18A-90.4) is amended to read as follows:

C.52:18A-90.4 State of New Jersey Cash Management Fund.

1. a. Notwithstanding the provisions of section 2 of P.L.1970, c.270 (C.52:18A-90.2), the Director of the Division of Investment may, subject to the approval of the State Investment Council and the State Treasurer, establish, maintain and operate a common trust fund to be known as the State of New Jersey Cash Management Fund in which may be deposited the surplus public moneys of the State, its counties, municipalities and school districts and the agencies or authorities created by any of these entities. This fund shall be considered a legal depository for public moneys and shall satisfy the requirements in that regard of section 1 of P.L.1956, c.174 (C.52:18-16.1) and N.J.S.40A:5-14.

b. The State Treasurer shall be the custodian of the fund and may receive public moneys paid into the fund by any other custodian of public moneys for the purpose of holding and investing said moneys. In that capacity, he may enter into an agreement with any one or more of the national banks and the banks authorized by this State to carry on a banking business, as he may select, for the custodianship of securities held in the fund and for recording the amounts deposited and withdrawn by each participant, the investment transactions entered into, and the balance to each participant's credit each day. A bank selected by the State Treasurer as custodian pursuant to this section shall have a physical presence in this State in the form of a principal office or branch office and shall employ New Jersey residents. Each bank selected by the State Treasurer may use recognized depositories or clearinghouses for the securities held in the fund or may use other banks as sub-custodians or sub-fiscal agents for these securities, provided that in every case each bank selected by the State Treasurer shall retain primary responsibility for these securities.

c. If a bank selected by the State Treasurer delegates its responsibilities as custodian or fiscal agent, or both, to a sub-custodian or sub-fiscal agent, the sub-custodian or sub-fiscal agent shall be responsible for the services delegated to it to the same degree as the primary custodian or primary fiscal agent and shall maintain accounting records and be otherwise held accountable to the same degree of fiduciary duty and responsibility as the appointing primary custodian or fiscal agent.

d. A bank selected by the State Treasurer as a primary custodian or fiscal agent which delegates its responsibilities as custodian or fiscal agent, or both, to a sub-custodian or sub-fiscal agent, shall not be relieved of its fiduciary duties and responsibilities.

e. The State Treasurer may promulgate such rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as he deems necessary for the efficient administration of the State of New Jersey Cash Management Fund, including but not limited to, (1) the specification of minimum amounts which may be deposited in the fund and minimum periods of time for which deposits shall be retained in the fund; (2) creation of a reserve for losses; (3) provision for payment of administration expenses from its earnings; and (4) distribution of the earnings in excess of such expenses or allocation of losses to the several participants in a manner which equitably reflects the differing amounts of their respective investments and the differing periods of time for which such amounts were in the custody of the fund.

f. The Director of the Division of Investment may invest the public moneys constituting the State of New Jersey Cash Management Fund in the same types of investments and subject to the same limitations provided for the investment of funds in the State Treasury. The director shall be responsible for the adequacy of the accounting services provided by the custodian bank and shall maintain such accounting records as may be required for that purpose.

C.52:18A-90.4a Definitions used in C.52:18A-90.4.

4. As used in section 1 of P.L.1977, c.281 (C.52:18A-90.4):

"Branch office" means an office at a fixed location other than a principal office, however designated, at which any business that may be conducted in a principal office of a bank may be transacted.

"Clearinghouse" means an association of banks or other payors regularly settling mutual claims, accounts and other items such as securities, payments and income.

"Custodian," "primary custodian," "fiscal agent" and "primary fiscal agent" means a bank which is selected by the State Treasurer to perform fiduciary functions in the maintenance of public trust funds and assets.

"Depository" means a separately incorporated bank or association of banks which serves as a temporary trustee for securities on behalf of a custodian, sub-custodian, fiscal agent or sub-fiscal agent.

"Principal office" means the headquarters of a bank which is its principal place of business.

"Sub-custodian" or "sub-fiscal agent" means a bank, located in any state or country, to which a primary custodian or primary fiscal agent may delegate its duties and responsibilities.

5. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 287

AN ACT concerning certain funds for minors and amending N.J.S.3B:15-16.

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

1. N.J.S.3B:15-16 is amended to read as follows:

Deposit and investment.

3B:15-16. Deposit and investment.

Where the estate of a minor for whom a guardian has been or is to be appointed by a surrogate, consists of or is likely to consist of the proceeds of a judgment recovered in favor of the minor in any court of this State, the court, on application of the guardian or a person entitled to be appointed as guardian, by its order may dispense with the giving of a bond by the guardian where the order directs that the moneys be paid into the Superior Court for the benefit of the minor and that the moneys, or any part thereof, shall be deposited to the credit of the court in an interest-bearing account in, or in interest-bearing certificates of deposit of, a responsible bank, savings bank or trust company, or in an account in, or in interest-bearing certificates of deposit of, any savings and loan association of this State or any other state, or any federal savings and loan association within the United States, the accounts of which are insured by the Federal Deposit Insurance Corporation, designated by the court.

2. This act shall take effect immediately.

Approved December 27, 2001.

CHAPTER 288

AN ACT designating the United States Highway Route No. 9 southbound bridge over the Raritan River as the "Ellis S. Vieser Memorial Bridge," and making an appropriation.

WHEREAS, Ellis S. Vieser was born June 22, 1922 in Newark, New Jersey, grew up in Irvington and resided in Middletown; and

WHEREAS, During the course of his long and productive life, Mr. Vieser accomplished many important tasks, the most important of which was his advocacy and commitment to investment in infrastructure as a key

to the State's economy, environment and quality of life, for which he was widely recognized as "Mr. Infrastructure"; and

WHEREAS, Mr. Vieser was a founder and guiding spirit for over a quarter century of the New Jersey Alliance for Action, a unique non-profit, non-partisan Statewide coalition that has become a major voice in the public affairs of the State; and

WHEREAS, Under Mr. Vieser's leadership, the Alliance for Action has grown to over 600 members, representing a diverse coalition of business, labor, professional, academic and government organizations working together in common cause for the betterment of New Jersey; and

WHEREAS, Mr. Vieser and the Alliance have been the catalysts in mobilizing bipartisan coalitions to educate the public on infrastructure issues and to gain voter approval of ballot questions that provided some \$100 billion in funds for infrastructure improvements in transportation, port dredging, water supply, college and public school construction and protection of the environment; and

WHEREAS, Mr. Vieser served under four governors and, by gubernatorial appointment, on numerous boards and commissions, including the Study Commission of Local and Regulatory Efficiency, the State and Local Expenditure and Revenue Policy Commission, the Cabinet and Citizens Committee on Permit Coordination and the Natural Resources Advisory Council; and

WHEREAS, Mr. Vieser served as Chairman of the New Jersey Environmental Infrastructure Trust, formerly the New Jersey Wastewater Treatment Trust, and was a member of the Employment Security Council within the Department of Labor; and

WHEREAS, Mr. Vieser received numerous awards during his career, including the Commander's Award for Public Service from the United States Army Corps of Engineers in 1987, the New Jersey Society of Professional Engineering Lifetime Achievement Award in 1988, the Governor's Pride Award for Economic Development in 1995, the National Rebuild America Achievement Award from The CIT Group, a Lifetime Achievement Award from the American Subcontractors Association of New Jersey, Inc. in 1997, an Honorary Doctor of Science Degree from the New Jersey Institute of Technology in 1995, the

Cabinet of Honor Award from the Monmouth County Water Resources Association in 1997, the Legacy Award from the William Patterson University Foundation in 1998, and the Samuel S. Baxter Award from the Water Resources Association in 1999; and

WHEREAS, Mr. Vieser, who died on June 18, 2001 in Middletown, New Jersey, at the age of 79, served as a director of two national organizations -- the National Water Alliance and The Road Information Program; and

WHEREAS, In tribute to Mr. Vieser's leadership, his contribution to the development of this State's infrastructure, and his many years of service to New Jersey, it is appropriate to designate the Route 9 southbound bridge over the Raritan River in his memory; now, therefore,

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

1. The Commissioner of Transportation is directed to designate the United States Highway Route No. 9 southbound bridge over the Raritan River in Sayreville Borough and Woodbridge Township, Middlesex County as the "Ellis S. Vieser Memorial Bridge."

2. This act shall take effect immediately.

Approved December 28, 2001.

CHAPTER 289

AN ACT concerning the installation or maintenance of fire protection equipment, supplementing chapter 27D of Title 52 of the Revised Statutes and amending P.L.1962, c.162, amending and supplementing P.L.1997, c.305 and amending P.L.1983, c.383.

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

C.52:27D-25n Definitions relative to fire protection equipment.

1. As used in sections 1 through 19 of this act:

"Business entity" means a proprietor, corporation, partnership or company operating as a fire protection contractor.

"Carbon dioxide fire protection system" means a special hazard fire suppression system that uses carbon dioxide as its extinguishing agent.

"Clean agent fire suppression system" means a special hazard fire suppression system that uses an extinguishing agent that will not damage the contents of the hazard.

"Commissioner" means the Commissioner of Community Affairs.

"Committee" means the Fire Protection Equipment Advisory Committee created by section 2 of this act.

"Director" means the Director of the Division of Fire Safety in the Department of Community Affairs.

"Division" means the Division of Fire Safety in the Department of Community Affairs.

"Engineered fire suppression system" means a fire suppression system which is designed individually to suit a particular purpose or hazard. Such a system requires individual calculation and design to determine the flow rates, nozzle pressures, pipe size, area or volume to be protected by each nozzle, quantities of extinguishing agent and the number and types of nozzles and their placement in a specific system.

"Fire alarm system" means a system which provides a warning alarm signaling the presence of fire conditions and may be capable of initiating an action to suppress a fire condition.

"Fire protection equipment" includes fire alarm systems, fire sprinkler systems, standpipe systems, clean agent fire suppression systems, special hazard fire suppression systems, carbon dioxide fire protection systems, foam fire protection systems, kitchen fire suppression systems, portable fire extinguishers or any other equipment designed to detect, suppress or extinguish a fire.

"Fire protection subcode official" means a qualified person appointed by the appropriate appointing authority or the commissioner pursuant to the authority of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Fire protection contractor" or "contractor" means a person or business entity that offers to undertake or represents itself as being able to undertake, or does undertake the installation, service, sale, repair, inspection or maintenance of fire protection equipment.

"Fire protection contractor business permit" means a permit issued by the commissioner to a business entity to operate as a fire protection contractor.

"Fire sprinkler system" means an automatic fire suppression system that includes an automatic water sprinkler system or a standpipe system and related system components, including detection.

"Fire suppression system" means an engineered or pre-engineered system that suppresses a fire using an extinguishing agent distributed through fixed piping and nozzles that are activated either manually or automatically. The system may include containers, nozzles, controls, automatic detection, manual releases, equipment shut downs and alarms. In such systems, an extinguishing agent is discharged through fixed pipes and nozzles into or over a potential fire hazard.

"Foam fire protection system" means a special hazard fire suppression system that uses foam as its extinguishing agent.

"Kitchen fire suppression system" means a pre-engineered system which is designed specifically to protect the hood, duct, and cooking appliances of a kitchen. The system, which may include containers, nozzles, controls, automatic detection, manual release, cooking appliance shutdown equipment, and alarms will have an extinguishing agent discharged through fixed pipes and nozzles over and into the fire hazard area.

"Certificate of certification" means a certificate issued by the commissioner that authorizes a person to engage in the fire protection equipment business to the degree indicated on the certificate.

"Certificate holder" means a person who is certified to engage in the fire protection equipment business.

"Maintenance" means the function of keeping equipment in such a condition that it will perform as it originally was designed to do.

"Portable fire extinguisher" means a portable device, carried or on wheels and operated by hand, containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing fire.

"Pre-engineered system" means a fire suppression system having predetermined flow rates, nozzle pressures, detection and quantities of extinguishing agent. Such a system has the specific pipe size, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and types of nozzles prescribed by a testing laboratory. The hazards protected by such a system are specifically limited as to type and size by a testing laboratory based upon actual fire tests. Limitations on hazards which can be protected by such a system are contained in the manufacturer's installation manual which is referenced as a part of the listing.

"Special hazard fire suppression system" means a fire suppression system that uses an extinguishing agent other than water.

"Standpipe system" means a fire protection system consisting of an arrangement of piping, valves, hose outlets, and allied equipment installed in a building or structure.

"Warranty" means a written guarantee given to a purchaser of fire protection equipment covering a period of one year after the installation of new fire protection equipment.

C.52:27D-25o "Fire Protection Equipment Advisory Committee."

2. a. There is created within the Division of Fire Safety in the Department of Community Affairs a "Fire Protection Equipment Advisory Committee." The committee shall be comprised of the Director of the Division of Fire Safety who shall serve ex officio and eight public members, appointed by the Governor. Each of the public members shall be selected by the Governor from a list of three nominees provided to the Governor by each of the following fire protection organizations or their successor organizations:

- New Jersey Association of Fire Equipment Distributors
- National Fire Sprinkler Association
- National Association of Fire Equipment Distributors
- American Fire Sprinkler Association
- Fire Suppression Systems Association
- Automatic Fire Alarm Association
- New Jersey Electrical Contractors Association
- New Jersey Burglar and Fire Alarm Association

b. The Governor shall appoint each member for a term of three years, except that of the members first appointed, three shall serve for terms of three years, three shall serve for terms of two years and two shall serve for terms of one year.

c. Any vacancy in the membership of the committee shall be filled for the unexpired term in the manner provided for the original appointment. No appointed member of the committee may serve more than two successive terms in addition to any unexpired term to which he has been appointed.

d. The committee shall annually elect from among its members a chair and vice-chair. The committee shall meet at least four times a year and may hold additional meetings as necessary to discharge its duties. In addition to such meetings, the committee shall meet at the call of the chair or the commissioner.

e. Members of the committee shall be compensated and reimbursed for actual expenses reasonably incurred in the performance of their official duties and reimbursed for expenses and provided with office and meeting facilities and personnel required for the proper conduct of the committee's business.

f. The committee shall make recommendations to the commissioner regarding rules and regulations pertaining to professional training, standards, identification and record keeping procedures for certificate

holders and their employees, classifications of certificates necessary to regulate the work of certificate holders, and other matters necessary to effectuate the purposes of this act.

C.52:27D-25p Powers, duties of commissioner.

3. The commissioner shall have the following powers and duties:
 - a. To set standards and approve examinations for applicants for a fire protection equipment certificate and issue a certificate to each qualified applicant;
 - b. To administer or approve the examination to be taken by applicants for certification;
 - c. To determine the form and contents of applications for certification and certificates;
 - d. To adopt a code of ethics for certificate holders;
 - e. To issue and renew certificates;
 - f. To set the amount of fees for certificates, certificate renewal, applications, examinations and other services, within the limits provided in subsection b. of section 8 of this act;
 - g. To refuse to admit a person to an examination or refuse to issue or suspend, revoke or fail to renew a certificate of certification of a certificate holder pursuant to the provisions of section 14 of this act;
 - h. To maintain a record of all applicants for a certificate;
 - i. To maintain and annually publish a record of every certificate holder, his place of business, place of residence and the date and number of his certificate;
 - j. To take disciplinary action, in accordance with section 14 of this act, against a certificate holder or employee who violates any provision of this act or any rule or regulation promulgated pursuant to this act;
 - k. To adopt standards and requirements for and approve continuing education programs and courses of study for certificate holders and their employees;
 - l. To review advertising by certificate holders; and
 - m. To perform such other duties as may be necessary to effectuate the purposes of this act.

C.52:27D-25q Certification required for fire protection contractors.

4. a. After the effective date of this act, no fire protection contractor shall engage in the installation, service, repair, inspection or maintenance of fire protection equipment without holding or employing a person who holds a valid certificate of certification issued in accordance with this act. A fire protection contractor who is not a certificate holder shall be required to obtain a fire protection contractor business permit from the commissioner, which shall be issued for three years upon payment of an appropriate fee set

by the commissioner and proof that the fire protection contractor employs a certificate holder. Notwithstanding the provisions of this section, persons holding a license to engage in the fire alarm business pursuant to P.L. 1997, c.305 (C.45:5A-23 et seq.), or who are electrical contractors as defined in section 2 of P.L. 1962, c.162 (C.45:5A-2), are exempt from the requirement of obtaining a certificate of certification under this act to engage in the fire alarm business pursuant to this act to the extent that such persons are acting within the scope of practice of their profession or occupation.

The certificate required by this section shall define by class the type of work in which a fire protection contractor may engage.

Notwithstanding any provision of this act, the commissioner shall issue a certificate to any person who has been employed as a fire protection contractor for a period of not less than five years on or before the effective date of this act, upon application with submission of satisfactory proof and payment by that person of the appropriate certification fee within 180 days following the effective date of this act.

b. The following certified classifications are hereby established:

(1) An "All Fire Protection Equipment Contractor" is authorized to install, service, repair, inspect and maintain all fire protection equipment.

(2) A "Fire Sprinkler System Contractor" is authorized to install, service, repair, inspect and maintain fire sprinkler systems.

(3) A "Special Hazard Fire Suppression System Contractor" is authorized to install, service, repair, inspect and maintain special hazard fire suppression systems and kitchen fire suppression systems.

(4) A "Fire Alarm System Contractor" is authorized to install, service, repair, inspect and maintain all fire alarm systems.

(5) A "Portable Fire Extinguisher Contractor" is authorized to install, service, repair, inspect and maintain all portable fire extinguishers.

(6) A "Kitchen Fire Suppression System Contractor" is authorized to install, service, repair, inspect and maintain all kitchen fire suppression systems.

c. A certified fire protection contractor shall perform work only within the scope of the contractor's certification class.

d. Any change in more than 50% of the ownership of a fire protection contractor shall require an amended certificate of certification. An application for an amended certificate of certification shall be submitted within 60 days of a change of ownership or change of company name or location. Certificates of certification are non-transferable and shall be displayed prominently in the principal work place. A certificate holder shall not be used to qualify more than one fire protection contractor. The commissioner shall be notified within 30 days if a certificate holder leaves the fire protection contractor or is replaced. Notwithstanding subsection a.

of this section, no fire protection contractor shall be denied the privilege of continuing business as a fire protection contractor in the event of death, illness, or other physical disability of the certificate holder who qualified the fire protection contractor for a business permit under this section, for at least six months following the date of such death, illness or other physical disability; provided that the fire protection contractor operates under such qualified supervision as the commissioner deems adequate. If, after six months, the fire protection contractor has failed to employ another certificate holder, then the commissioner shall revoke its fire protection contractor business permit.

e. Whenever the commissioner shall find cause to deny an application for a certificate of certification or to suspend or revoke a certificate, he shall notify the applicant or the holder of the certificate and state the reasons for the denial or suspension, as appropriate.

f. Whenever the commissioner shall find cause to deny an application for a fire protection contractor business permit or to suspend or revoke a fire protection contractor business permit, he shall notify the applicant or the holder of the business permit and state the reasons for the denial or suspension, as appropriate.

g. Any person subject to certification under this act shall be exempt from any other State, county or municipal certification, licensing or registration requirements for installing, servicing, repairing, inspecting or maintaining fire protection equipment.

C.52:27D-25r Requirements to engage in fire protection equipment business.

5. No person shall advertise that he is authorized to engage in, or engage in the fire protection equipment business, or otherwise engage in the installation, service, repair, inspection or maintenance of fire protection equipment unless he satisfies the requirements of this act.

C.52:27D-25s Application for certificate.

6. a. Application for a certificate to engage in the fire protection equipment business shall be made to the commissioner in the manner and on the forms as the commissioner may prescribe.

b. An application to engage in the fire protection equipment business shall include the name, age, residence, present and previous occupations of the applicant and, in the case of a business firm engaged in the fire protection equipment business, of each member, officer or director thereof, the name of the municipality and the location therein by street number or other appropriate description of the principal place of business and the location of each branch office.

c. The commissioner may require other information of the applicant and, if the applicant is proposing to qualify a business firm, of the business

firm to determine the professional competence and integrity of the concerned parties.

C.52:27D-25t Qualifications for applicants.

7. An applicant seeking certification to engage in the fire protection equipment business shall:

- a. Be at least 18 years of age;
- b. Be of good moral character, and not have been convicted of a crime of the first, second or third degree within 10 years prior to the filing of the application;
- c. Meet qualifications established by the commissioner, regarding experience, continuing education, financial responsibility and integrity; and
- d. Establish his qualifications to perform and supervise various phases of fire protection equipment installation, service, repair, inspection and maintenance as evidenced by successful completion of an examination approved by the commissioner.

C.52:27D-25u Issuance of certificates.

8. a. Certificates of certification shall be issued to qualified applicants seeking certification to engage in the fire protection equipment business for a three-year period, upon payment of a certificate of certification fee. Certificate renewals shall be issued for a three-year period upon the payment of a renewal fee. A renewal application shall be filed with the commissioner at least 45 days prior to expiration of a certificate of certification. A certificate of certification issued pursuant to this act shall not be transferable.

b. Fees shall be established, prescribed or changed by the commissioner, to the extent necessary to defray all proper expenses incurred by the commissioner, committee and any staff employed to administer the provisions of this act, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be required. All fees and any fines imposed under this act shall be paid to the commissioner and shall be forwarded to the State Treasurer and become part of the General Fund.

C.52:27D-25v Requirements for certificate holder to do business.

9. No holder of a certificate of certification qualified under the provisions of this act shall engage in the fire protection equipment business unless the certificate holder:

- a. Maintains at least one business office within this State or files with the commissioner a statement, duly executed and sworn to before a person authorized by the laws of this State to administer oaths, containing a power of attorney constituting the commissioner the true and lawful attorney of the certificate holder upon whom all original process in an action or legal

proceeding against the certificate holder may be served and in which the certificate holder agrees that the original process that may be served upon the commissioner shall be of the same force and validity as if served upon the certificate holder and that the authority thereof shall continue in force so long as the certificate holder engages in the fire protection equipment business;

b. Clearly marks the outside of each installation and service vehicle to be used in conjunction with the fire protection equipment business with the business name as determined by the commissioner;

c. Maintains an emergency service number attended to on a 24-hour basis and responds appropriately to emergencies on a 24-hour basis as determined by the commissioner.

C.52:27D-25w Responsibility for employees.

10. No employee of a certificate holder shall engage in the installation, service, repair, inspection or maintenance of fire protection equipment unless the certificate holder bears full responsibility for the inspection of all work to be performed in compliance with recognized safety standards.

C.52:27D-25x Liability for employee.

11. A certificate holder shall be liable for any unprofessional conduct of an employee while acting within the scope of his employment, except that the conduct shall not be cause for suspension or revocation of a certificate, unless the commissioner determines that the certificate holder had knowledge thereof, or there is shown to have existed a pattern of unprofessional conduct.

C.52:27D-25y Licensure from other jurisdiction valid.

12. If the commissioner determines that an applicant holds a valid license, registration, certification or other authorization from another jurisdiction which requires equal or greater experience and knowledge requirements, the commissioner may accept the evidence of that license, registration, certification or other authorization as meeting the experience and knowledge requirements of this act for a person to engage in the fire protection equipment business.

C.52:27D-25z Commercial general liability insurance.

13. All contractors shall carry commercial general liability insurance, including products and completed operations coverage, in the minimum amount of \$1,000,000 for each coverage. The contractor shall furnish a general warranty for one year with each system installation in accordance with guidelines promulgated by the commissioner.

C.52:27D-25aa Refusal to admit person to examination, suspension, revocation of certificate, grounds.

14. a. The commissioner may refuse to admit a person to examination or may refuse to issue or may suspend or revoke any certificate of certification issued by the commissioner upon proof that the applicant or holder of such certificate:

(1) Has obtained a certificate or authorization to sit for an examination, as the case may be, through fraud, deception or misrepresentation;

(2) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

(3) Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;

(4) Has engaged in repeated acts of negligence, malpractice or incompetence;

(5) Has engaged in professional or occupational misconduct as may be determined by the commissioner;

(6) Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the commissioner. For the purpose of this paragraph, a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

(7) Has had his authority to engage in the activity regulated by the commissioner revoked or suspended by any other state, agency or authority for reasons consistent with this section;

(8) Has violated or failed to comply with the provisions of any act or regulation administered by the commissioner;

(9) Is incapable, for medical or any other good cause, of discharging the functions of a certificate holder in a manner consistent with the public's health, safety and welfare;

(10) Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;

(11) Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of that act or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;

(12) Is presently engaged in drug or alcohol use that is likely to impair the ability to install, service, repair, inspect or maintain fire protection

equipment with reasonable skill and safety. For purposes of this paragraph, "presently" means at this time or any time within the previous 365 days;

(13) Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the commissioner, or aided and abetted an unlicensed person or entity in performing such an act;

(14) Advertised fraudulently in any manner.

For purposes of paragraph (10) of this subsection: "completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of permit for which application is made; and "permit" has the same meaning as defined in section 1 of P.L.1991, c.421 (C.13:1D-101).

b. In addition, or as an alternative to any other penalty, the commissioner may promulgate, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations identifying violations of provisions of this act and establishing a range of penalties for violations of similar type, seriousness and duration.

C.52:27D-25bb After revocation, application for new certificate.

15. After revocation of a certificate of certification, the commissioner shall not renew or reinstate such certificate; however, a person may apply for a new certificate of certification. When it can be shown that all loss caused by the act or omission for which the certificate was revoked has been fully satisfied, and that all conditions imposed by the order of revocation have been complied with, the commissioner may issue a new certification, provided that the applicant meets all other qualifications necessary for certification and pays the appropriate fee.

C.52:27D-25cc Dispute settlement hearing.

16. Any person aggrieved by any action, notice, ruling or order of the commissioner, with respect to this act, shall have the right to a dispute settlement hearing, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The aggrieved party shall submit a written request to the commissioner for a hearing within 15 days of the action, notice, ruling or order. All hearing requests shall include:

- a. The date of the action which is the subject of the appeal;
- b. The name and status of the person submitting the appeal;
- c. The specific violations or other action claimed to be in error; and
- d. A concise statement of the basis for the appeal.

C.52:27D-25dd Arbitration, review by commissioner on disputed work.

17. a. Any person who has contracted with a fire protection contractor for the installation, service, repair, inspection or maintenance of fire protection equipment who is not satisfied with the work done by that contractor shall notify the contractor of the problems and shall allow a reasonable time for the repair of such problems. If the repairs are not made within a reasonable time, or are unsatisfactory to the person, that person may file a request for the commissioner to designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association.

b. Where both parties do not agree to submit to the arbitration, the commissioner shall thoroughly review the matter and shall make a decision as to the merits of the claim and issue an order directing appropriate relief if warranted. If, within 30 calendar days of the commissioner's decision, either party files a written notice requesting an administrative hearing, the commissioner shall provide for an administrative hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), with a final decision to be issued by the commissioner. In the alternative, a claimant may seek a remedy directly in court without regard to dispute settlement procedures made available in accordance with this act.

c. If, in the opinion of the commissioner, fire protection equipment may be rendered inoperable for an extended period of time, the commissioner may order the owner or contractor to restore the equipment to service in accordance with the fire code regulations promulgated by the commissioner pursuant to section 7 of P.L.1983, c.383 (C.52:27D-198).

d. The rights, remedies and procedures accorded by the provisions of this section are in addition to, and cumulative of, any other right, remedy and procedure accorded by the common law or statutes of this State, and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or procedure.

C.52:27D-25ee Valid license, certain, required for certification.

18. Any person licensed to engage in the fire alarm business pursuant to P.L.1997, c.305 (C.45:5A-23 et seq.) whose license is not in good standing with the Board of Examiners of Electrical Contractors shall not be eligible for a certificate of certification to engage in the fire protection contractor business under the provisions of this act.

C.52:27D-25ff Exemption, certain.

19. Notwithstanding the provisions of this act, the commissioner may exempt from the requirements of this act any person engaged in the installation of fire protection equipment in dormitories pursuant to P.L.2000, c.56 (C.52:27D-198.7 et al.). The exemption shall apply only for

work performed pursuant to P.L.2000, c.56 (C.52:27D-198.7 et al.) and only for such time as is necessary to complete work performed pursuant to that act.

20. Section 18 of P.L.1962, c.162 (C.45:5A-18) is amended to read as follows:

C.45:5A-18 Exempt work or construction.

18. Electrical work or construction which is performed on the following facilities or which is by or for the following agencies shall not be included within the business of electrical contracting so as to require the securing of a business permit under this act:

- (a) Minor repair work such as the replacement of lamps and fuses.
- (b) The connection of portable electrical appliances to suitable permanently installed receptacles.
- (c) The testing, servicing or repairing of electrical equipment or apparatus.
- (d) Electrical work in mines, on ships, railway cars, elevators, escalators or automotive equipment.
- (e) Municipal plants or any public utility as defined in R.S.48:2-13, organized for the purpose of constructing, maintaining and operating works for the generation, supplying, transmission and distribution of electricity for electric light, heat, or power.
- (f) A public utility subject to regulation, supervision or control by a federal regulatory body, or a public utility operating under the authority granted by the State of New Jersey, and engaged in the furnishing of communication or signal service, or both, to a public utility, or to the public, as an integral part of a communication or signal system, and any agency associated or affiliated with any public utility and engaged in research and development in the communications field.
- (g) A railway utility in the exercise of its functions as a utility and located in or on buildings or premises used exclusively by such an agency.
- (h) Commercial radio and television transmission equipment.
- (i) Construction by any branch of the federal government.
- (j) Any work with a potential of less than 10 volts.
- (k) Repair, manufacturing and maintenance work on premises occupied by a firm or corporation, and installation work on premises occupied by a firm or corporation and performed by a regular employee who is a qualified journeyman electrician.
- (l) Installation, repair or maintenance performed by regular employees of the State or of a municipality, county, or school district on the premises

or property owned or occupied by the State, a municipality, county, or school district.

(m) The maintaining, installing or connecting of automatic oil, gas or coal burning equipment, gasoline or diesel oil dispensing equipment and the lighting in connection therewith to a supply of adequate size at the load side of the distribution board.

(n) Work performed by a person on a dwelling that is occupied solely as a residence for himself or for a member or members of his immediate family.

(o) (Deleted by amendment, P.L.1997, c.305).

(p) Any work performed by a landscape irrigation contractor which has the potential of not more than 30 volts involving the installation, servicing, or maintenance of a landscape irrigation system as this term is defined by section 2 of this amendatory and supplementary act. Nothing in this act shall be deemed to exempt work covered by this subsection from inspection required by the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or regulations adopted pursuant thereto.

(q) Any work performed by a person certified pursuant to sections 1 through 10 of P.L.2001, c.289 (C.52:27D-25n through C.52:27D-25w) that is not branch circuit wiring. For the purposes of this subsection, "branch circuit wiring" means the circuit conductors between the final overcurrent device protecting the circuit and one or more outlets. A certificate holder shall be deemed to have engaged in professional misconduct for the purposes of section 8 of P.L.1978, c.73 (C.45:1-21) for violating the provisions of this subsection.

(r) Any work performed by an alarm business, as that term is defined by section 2 of P.L.1985, c.289 (C.45:5A-18.1), licensed pursuant to P.L.1997, c.305 (C.45:5A-23 et seq.) that is not branch circuit wiring. For the purposes of this subsection, "branch circuit wiring" means the circuit conductors between the final overcurrent device protecting the circuit and one or more outlets. A licensee shall be deemed to have engaged in professional misconduct for the purposes of section 8 of P.L.1978, c.73 (C.45:1-21) for violating the provisions of this subsection.

The board may also exempt from the business permit provisions of this act such other electrical activities of like character which in the board's opinion warrant exclusion from the provisions of this act.

21. Section 9 of P.L.1997, c.305 (C.45:5A-29) is amended to read as follows:

C.45:5A-29 Exemptions from licensing requirement.

9. a. Telephone utilities and cable television companies regulated by the Board of Regulatory Commissioners pursuant to Title 48 of the Revised

Statutes and persons in their employ while performing the duties of their employment are exempt from the requirement of obtaining a license to engage in the alarm business pursuant to this act.

b. Electrical contractors regulated by the Board of Examiners of Electrical Contractors pursuant to P.L.1962, c.162 (C.45:5A-1 et seq.) and persons in their employ while performing the duties of their employment are exempt from the requirement of obtaining a license to engage in the alarm business pursuant to this act.

c. Any person who is certified to engage in the fire protection equipment business or who holds a fire protection contractor business permit pursuant to P.L.2001, c.289 (C.52:27D-25n et al.) and persons in their employ are exempt from the requirement of obtaining a license to engage in the fire alarm business pursuant to this act.

C.45:5A-27.1 Ineligibility for license to engage in fire alarm business.

22. Any person certified to engage in the fire protection contractor business pursuant to P.L.2001, c.289 (C.52:27D-25n et al.) whose certificate of certification is not in good standing with the Commissioner of Community Affairs shall not be eligible for a license to engage in the fire alarm business under the provisions of section 1 of P.L.1995, c.213 (C.45:5A-9.1).

23. Section 7 of P.L.1983, c.383 (C.52:27D-198) is amended to read as follows:

C.52:27D-198 Regulations to provide reasonable degree of safety from fire, explosion.

7. a. The commissioner shall promulgate, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and after consulting with the fire safety commission, regulations to insure the maintenance and operation of buildings and equipment in such a manner as will provide a reasonable degree of safety from fire and explosion.

Regulations promulgated pursuant to this section shall include a uniform fire safety code primarily based on the standards established by the Life Safety Code (National Fire Protection Association 101) and any other fire codes of the National Fire Protection Association and the Building Officials and Code Administrators International (BOCA) Basic Fire Prevention Code, both of which may be adopted by reference. The regulations may include modifications and amendments the commissioner finds necessary.

b. The code promulgated pursuant to this section shall include the requirements for fire detection and suppression systems, elevator systems, emergency egresses and protective equipment reasonably necessary to the fire safety of the occupants or intended occupants of new or existing buildings subject to this act, including but not limited to electrical fire

hazards, maintenance of fire protection systems and equipment, fire evacuation plans and fire drills, and all components of building egress. In addition, the regulations issued and promulgated pursuant to this section which are applicable to new or existing buildings shall include, but not be limited to fire suppression systems, built-in fire fighting equipment, fire resistance ratings, smoke control systems, fire detection systems, and fire alarm systems including fire service connections.

c. When promulgating regulations, the commissioner shall take into account the varying degrees of fire safety provided by the different types of construction of existing buildings and the varying degrees of hazard associated with the different types and intensity of uses in existing buildings. When preparing regulations which require the installation of fire safety equipment and devices, the commissioner shall consult with the fire safety commission and shall take into account, to the greatest extent prudent, the economic consequences of the regulations and shall define different use groups and levels of hazard within more general use groups, making corresponding distinctions in fire safety requirements for these different uses and levels of hazard. The commissioner shall also take into account the desirability of maintaining the integrity of historical structures to the extent that it is possible to do so without endangering human life and safety. The regulations established pursuant to this subsection shall apply to secured vacant buildings only to the extent necessary to eliminate hazards affecting adjoining properties.

d. Except as otherwise provided in this act, including rules and regulations promulgated hereunder, all installations of equipment and other alterations to existing buildings shall be made in accordance with the technical standards and administrative procedures established by the commissioner pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and shall be subject to plan review and inspection by the local construction and subcode officials having jurisdiction over the building, who shall enforce the regulations established pursuant to this act applicable to the installation or other alteration along with the regulations established pursuant to the "State Uniform Construction Code Act."

e. (Deleted by amendment, P.L.2001, c.289.)

C.52:27D-25gg Rules, regulations.

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

25. This act shall take effect on the first day of the seventh month next following enactment.

Approved December 28, 2001.

CHAPTER 290

AN ACT concerning the membership of the 9-1-1 Commission and amending P.L.1989, c.3.

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

1. Section 2 of P.L.1989, c.3 (C.52:17C-2) is amended to read as follows:

C.52:17C-2 9-1-1 commission.

2. a. There is created in the Office of Information Technology a commission to be known as the 9-1-1 Commission which shall oversee the office in the planning, design, and implementation of the Statewide emergency enhanced 9-1-1 telephone system to be established pursuant to this act. The commission shall consist of 30 members as follows: two members of the Senate appointed by the President of the Senate, who shall not be both of the same political party; two members of the General Assembly appointed by the Speaker of the General Assembly, who shall not be both of the same political party; the following members ex officio: Chief Technology Officer of the Office of Information Technology; President of the Board of Public Utilities; Superintendent of State Police; Deputy Director of the State Office of Emergency Management in the Department of Law and Public Safety; Director of the Bureau of Fire Safety in the Department of Community Affairs; Director of Emergency Medical Services in the Department of Health and Senior Services; one member of the Governing Board of the Office of Information Technology in but not of the Department of the Treasury; the following public members appointed by the Governor with the advice and consent of the Senate: a representative of the New Jersey State League of Municipalities; a representative of the New Jersey State Association of Chiefs of Police; a representative of the Fire Fighters' Association of New Jersey; a representative of the New Jersey First Aid Council; a representative of the Associated Public Safety Communications Officers (APCO); a representative of Bell Atlantic-New Jersey; a representative of the independent telephone companies; two

representatives of the wireless telephone companies; one representative of the National Emergency Number Association; two members representing county-wide dispatch centers; one representative of the Sheriffs Association of New Jersey; one representative of the New Jersey Fire Chiefs Association; one representative from the Certified Local Exchange Carriers; two members representing multi-municipal public safety dispatch centers who serve more than one, but less than five municipalities; and two members representing municipal public safety dispatch centers.

The members of the Senate and General Assembly appointed to the commission shall serve for terms which shall be for the term for which they were elected. Of the public members first appointed by the Governor with the advice and consent of the Senate, seven shall be appointed for terms of three years, six shall be appointed for terms of two years, and six shall be appointed for terms of one year. Thereafter, the public members of the commission shall be appointed for terms of three years. Vacancies on the commission shall be filled in the same manner as the original appointment but for the unexpired term. Members may be removed by the appointing authority for cause. The initial members shall be appointed within 30 days of the effective date of P.L.1999, c.125 (C.52:17C-3.1 et al.). The commission shall have the authority to establish subcommittees as it deems appropriate to carry out the purposes of this act.

The members of the Senate and General Assembly appointed to the commission shall be non-voting, advisory members, appointed solely for the purpose of developing and facilitating legislation to assist the commission in fulfilling its statutory mission, and may not exercise any of the executive powers delegated to the commission by law.

b. Members of the commission shall serve without compensation, but the legislative and public members shall be entitled to reimbursement for expenses incurred in performance of their duties, within the limits of any funds appropriated or otherwise made available for that purpose.

c. Each ex officio member may designate an employee of the member's department or agency to represent the member at meetings or hearings of the commission. All designees may lawfully vote and otherwise act on behalf of the members for whom they constitute the designees.

d. The 9-1-1 Commission shall be constituted upon the appointment of the majority of its authorized membership and shall have no expiration date. Until the commission is constituted: (1) the Advisory Commission appointed by the Chief Technology Officer before the effective date of P.L.1999, c.125 (C.52:17C-3.1 et al.) shall be continued and shall exercise the advisory functions granted to it by the Chief Technology Officer and (2) the Chief Technology Officer shall be responsible for the review and approval of any function of the office which is the responsibility of the 9-1-1

Commission. Membership on the advisory commission shall not disqualify a person from membership on the 9-1-1 Commission.

2. This act shall take effect immediately.

Approved December 28, 2001.

CHAPTER 291

AN ACT concerning criminal proceedings and amending N.J.S.2C:24-4.

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

1. N.J.S.2C:24-4 is amended to read as follows:

Endangering welfare of children.

2C:24-4. Endangering Welfare of Children.

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

"Child" means any person under 16 years of age.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Prohibited sexual act" means

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or

(j) Any act of sexual penetration or sexual contact as defined in N.J.S.2C:14-1.

"Reproduction" means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L.2001, c.291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5) (a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 16. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 16, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 16, nor shall it be a defense that the actor believed that the child was 16 years of age or older, even if such a mistaken belief was reasonable.

2. This act shall take effect immediately, and shall be retroactive to, May 1, 1999, the effective date of P.L.1998, c.126.

Approved December 28, 2001.

CHAPTER 292

AN ACT establishing the Spread the Word Program in the Department of Education, supplementing chapter 6 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:6-110 Spread the Word Program.

1. a. There is established the Spread the Word Program in the Department of Education. The purpose of the program is to provide books to elementary school children in grades kindergarten through five. Under the program, donating schools shall collect books from children and families who have extra books at home, and these books shall be donated to recipient schools for distribution to children who have few books at home. The program shall be county-based and shall be administered by the county superintendent of schools.

b. Prior to the start of each school year, the department shall send to each elementary school in the State an informational brochure on the program. If the school is interested in participating in the program as a donating school, the principal shall contact the county superintendent of schools to receive further information on program participation.

c. A donating school shall conduct book drives. When the drive is finished, the school shall review the donated books to ensure that they are age-appropriate and in satisfactory condition. After the review, the school shall count, sort and pack the books and contact the county superintendent of schools to report the approximate number of books collected and the number of boxes needed to be transported. The county superintendent of schools shall arrange for the books to be transported from the donating school to an eligible recipient school. The State shall assume the costs of transporting the donated books to the recipient school.

d. The State Board of Education shall determine criteria for choosing recipient schools which shall be based, at least in part, on the number of low-income pupils attending the school. The county superintendent of schools shall contact schools within the county that meet the criteria and

provide information regarding the program. An eligible school that is interested in receiving donated books under the program shall inform the county superintendent of schools.

e. The Commissioner of Education shall assign a person on a part-time basis to serve as the coordinator of the program.

2. This act shall take effect immediately.

Approved December 28, 2001.

CHAPTER 293

AN ACT concerning mortgage loans from the Police and Firemen's Retirement System of New Jersey to members of the system and amending P.L.1992, c.78.

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

1. Section 4 of P.L.1992, c.78 (C.43:16A-16.11) is amended to read as follows:

C.43:16A-16.11 Eligibility for mortgage loans, conditions of repayment.

4. a. In addition to any loan for which he may be eligible pursuant to the provisions of section 18 of P.L.1964, c.241 (C.43:16A-16.1) and notwithstanding the provisions of that or any other law to the contrary, any member of the Police and Firemen's Retirement System who, at the time of application, is employed by the State or a county, municipality or other political subdivision of the State and who has at least one year of creditable service is, for the purpose of securing for his own occupation as his principal residence a residential property located within this State, eligible to receive a mortgage loan pursuant to the provisions of this act. The mortgage loan shall be used only for the purpose of enabling a borrower to acquire or construct a residential property or refinance an existing residential property loan.

No member shall be eligible hereunder for more than one outstanding mortgage loan at any time, and no member shall be eligible to receive a second mortgage loan on a residential property already mortgaged by him. Preference shall be given in making loans to members who are applying to acquire or construct their first principal place of residence.

b. Any mortgage loan made pursuant to the provisions of this act, together with any interest and expenses to the retirement system associated with the making of that loan, shall be repaid in equal installments.

c. The amount of interest charged with respect to a mortgage loan made pursuant to the provisions of this act shall be fixed for the entire term of the loan. The New Jersey Housing and Mortgage Finance Agency, established under section 4 of P.L.1983, c.530 (C.55:14K-4), shall initially establish the rate within 120 days of the effective date of this act and semiannually reset the rate thereafter. The rate shall be determined by the New Jersey Housing and Mortgage Finance Agency by adding 1% to the index. For the purposes of this subsection, the index shall be the weekly average yield at the time the rate is reset on ten-year United States Treasury securities adjusted to a constant maturity as made available by the Federal Reserve Board. If the issuance of ten-year United States Treasury securities is discontinued, the subsequent index shall be determined by the State Treasurer with the advice of the New Jersey Housing and Mortgage Finance Agency. The term of any mortgage loan so made shall not exceed 30 years.

d. No mortgage loan made pursuant to the provisions of this act shall be sold, transferred or assigned to any person, nor shall the payments with respect to any mortgage loan so made be assumed by any person other than the member to whom that loan was made, except that in the event of the death of a member, the mortgage may be assignable to a surviving spouse if the spouse is the sole heir to the property.

e. The instrument evidencing a mortgage loan under the provisions of this act may be in such form, and may contain such provisions, not inconsistent with law, as the director may choose to insert for the protection of the retirement system's lien and the preservation of its interest in the real property mortgaged to it.

2. This act shall take effect immediately.

Approved December 28, 2001.

CHAPTER 294

AN ACT concerning certain consumer loans and amending P.L.1996, c.157.

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

1. Section 2 of P.L.1996, c.157 (C.17:11C-2) is amended to read as follows:

C.17:11C-2 Definitions regarding licensed lenders.

2. As used in this act:

"Billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

"Borrower" means any person applying for a loan from a lender licensed under this act, whether or not the loan is granted, and any person who has actually obtained such a loan.

"Closed-end loan" with respect to a secondary mortgage loan means a mortgage loan pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time, except that: (1) the amount of the final installment payment may be substantially greater than the previous installments if the term of the loan is at least 36 months, or under 36 months if the remaining term of the first mortgage loan is under 36 months; or (2) the amount of the installment payments may vary as a result of the change in the interest rate as permitted by this act. "Closed-end loan" with respect to a consumer loan means a loan which meets the requirements of section 35 of P.L.1996, c.157 (C.17:11C-35) and pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time.

"Consumer loan business" means the business of making loans of money, credit, goods or things in action, which are to be used primarily for personal, family or household purposes, in the amount or value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this act and without first obtaining a license from the commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$50,000 or less, or in the business of negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or indorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer lender" means a person licensed, or a person who should be licensed, under this act to engage in the consumer loan business.

"Consumer loan" means a loan of \$50,000 or less made by a consumer lender, payable in one or more installments, pursuant to the terms of this act, and not a first mortgage loan or a secondary mortgage loan.

"Controlling interest" means ownership, control or interest of 25% or more of the licensee or applicant.

"Correspondent mortgage banker" means a mortgage banker who: (1) in the regular course of business, does not hold mortgage loans in its portfolio, or service mortgage loans, for more than 90 days; and (2) has shown to the department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise.

"Department" means the Department of Banking and Insurance.

"Depository institution" means a state or federally chartered bank, savings bank, savings and loan association, building and loan association or credit union, irrespective of whether the entity accepts deposits.

"First mortgage loan" means any loan secured by a first mortgage on real property on a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Licensee" means a person who is licensed under this act, or who should be so licensed.

"Mortgage banker" means any person, not exempt under section 4 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates first mortgage loans in the primary market.

"Mortgage broker" means any person, not exempt under section 4 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for others, or offers to negotiate, place or sell for others, first mortgage loans in the primary market.

"Open-end loan" means a secondary mortgage loan made by a secondary lender or a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

(1) The lender may permit the borrower to obtain advances of money from the secondary lender from time to time or the secondary lender may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

(3) Interest is computed on the unpaid principal balance or balances of the account from time to time; and

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

"Person" means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

"Primary market" means the market wherein first mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit, and shall not include the sale or acquisition of a mortgage loan after a mortgage loan is closed.

"Sales finance company" shall have the meaning ascribed to that term in section 1 of P.L.1960, c.40 (C.17:16C-1).

"Secondary lender" means a person licensed, or a person who should be licensed, under this act to engage in the secondary mortgage loan business.

"Secondary mortgage loan" means a loan made to an individual, association, joint venture, partnership, limited partnership association, limited liability company, trust, or any other group of individuals, however organized, except a corporation, which is secured in whole or in part by a lien upon any interest in real property, including but not limited to shares of stock in a cooperative corporation, created by a security agreement, including a mortgage, indenture, or any other similar instrument or document, which real property is subject to one or more prior mortgage liens and on which there is erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, except that the following loans shall not be subject to the provisions of this act: (1) a loan which is to be repaid in 90 days or less; (2) a loan which is taken as security for a home repair contract executed in accordance with the provisions of the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); or (3) a loan which is the result of the private sale of a dwelling, if title to the dwelling is in the name of the seller and the seller has resided in that dwelling for at least one year, if the buyer is purchasing that dwelling for his own residence and, if the buyer, as part of the purchase price, executes a secondary mortgage in favor of the seller.

"Secondary mortgage loan business" means advertising, causing to be advertised, soliciting, negotiating, offering to make or making a secondary

mortgage loan in this State, whether directly or by any person acting for his benefit.

"Solicitor" means any person not licensed as a mortgage banker, correspondent mortgage banker or mortgage broker who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts first mortgage loan applications, or assists borrowers in completing first mortgage loan applications, and whose compensation is in any way based on the dollar amount or volume of first mortgage loan applications, first mortgage loan closings or other first mortgage loan activity.

2. Section 32 of P.L.1996, c.157 (C.17:11C-32) is amended to read as follows:

C.17:11C-32 Consumer loans permitted by licensees, terms.

32. a. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, every licensee authorized to engage in the consumer loan business may loan any sum of money not exceeding \$50,000, repayable in an installment or installments, and may charge, contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A closed-end consumer loan contract may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the contract provides for the possibility of an increase or decrease or both in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the contract. No rate increase shall take effect unless (1) at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (2) unless at least 365 days have elapsed without any increase in the rate. Where the loan contract so provides for an increase or decrease in the rate of interest, the installments may vary in amount, notwithstanding any other law to the contrary, except

that if the rate increases, the borrower may request, and the lender shall provide for, either an increase in the amount of the installment payment or an extension of the term of the loan, or some combination of an increase in the amount of the installment payment and extension of the term.

c. An open-end loan agreement may provide that the lender may at any time, or from time to time, change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided however, that:

(1) the periodic interest rate shall not be changed more than once in each billing cycle;

(2) any change in the periodic interest rate shall correspond to the movement of a market interest rate index specified in the agreement which is readily verifiable by the borrower and beyond the control of the lender;

(3) a change in any term of the agreement, including the periodic interest rate, may be permitted to apply to any then-outstanding unpaid indebtedness in the borrower's account, including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change, so long as that fact is clearly and conspicuously disclosed in the agreement;

(4) if the agreement provides for the possibility of a change in any term of the agreement, including the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the written notice; and

(5) no change in any term of the agreement or of the index specified in the agreement shall be effective unless: (a) at least 30 days prior to the effective date of the change, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the change and the indebtedness to which it applies, and states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the law to which the agreement relates on or after the effective date of the change specified in the notice shall constitute acceptance of the change; and (b) either the borrower agrees in writing to the change or the borrower or another person authorized by him incurs further indebtedness on or after the effective date of the change stated in that notice, which indebtedness may include outstanding balances. Any borrower who fails to use the borrower's account or so to indicate agreement to the change shall be permitted to pay the outstanding unpaid indebtedness in the borrower's account in accordance with the terms governing the open-end consumer loan agreement without giving effect to the change.

d. The consumer lender shall notify each affected borrower in a consumer loan agreement of any change in the manner set forth in the

closed-end and open-end agreement governing the plan and in compliance with the requirements of the federal "Truth in Lending Act" (15 U.S.C.s.1601 et seq.) and regulations promulgated thereunder, as in effect from time to time, if applicable.

e. The interest and periodic payments for consumer loans at these rates shall be computed from the standard tables based on the actuarial or annuity method which conforms to the so-called "United States Rule of Partial Payments," which provides that interest shall be calculated whenever a payment is made and the payment shall be first applied to the payment of interest and if it exceeds the interest due, the balance is to be applied to diminish principal. If the payment is insufficient to pay the entire amount of interest, the balance of interest due shall not be added to principal, so as to produce interest thereon.

f. No interest on a consumer loan shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances. For the purpose of computing interest, all installment payments shall be applied on the date of receipt, and interest shall be charged for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

g. No consumer lender shall induce or permit any person nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of a consumer loan at the same time for the purpose of obtaining a higher rate of interest than would otherwise be permitted by this section. This prohibition shall not apply to any loan made pursuant to any other law of this State.

3. Section 37 of P.L.1996, c.157 (C.17:11C-37) is amended to read as follows:

C.17:11C-37 Prohibited charges for large consumer loans.

37. No licensee authorized to engage in the consumer loan business shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than he would be permitted by law to charge if he were not a licensee under this act upon the loan, use, or sale of credit, of the amount or value of more than \$50,000. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as indorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both under one or more loan contracts to the licensee at any time the sum of more than \$50,000 for principal.

4. Section 38 of P.L.1996, c.157 (C.17:11C-38) is amended to read as follows:

C.17:11C-38 Certain payments deemed loan secured by assignment.

38. The payment of \$50,000 or less in money, credit, goods or things in action, as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall, for the purposes of this act, be deemed a loan secured by the assignment. The transaction shall be governed by and subject to the provisions of this act and any such sale, assignment or order hereafter made shall, for the purposes of this act, be void and of no effect.

5. Section 40 of P.L.1996, c.157 (C.17:11C-40) is amended to read as follows:

C.17:11C-40 Loans secured by property.

40. The payment of \$50,000 or less in money, credit, goods or things in action as consideration for any sale of personal property which is made on condition that the property be sold back at a greater price shall, for the purposes of this act, be deemed to be a loan secured by the property and the amount by which the repurchase price exceeds the original payment actually paid shall be deemed interest or charges upon the loan from the date the original payment is made until the date the repurchase price is paid. The transaction shall be governed by and be subject to the provisions of this act as if it were a consumer loan.

6. Section 41 of P.L.1996, c.157 (C.17:11C-41) is amended to read as follows:

C.17:11C-41 Consumer lenders, prohibited practices.

41. a. No consumer lender shall make any loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned, nor shall any such assignment or order be taken by a licensee at any time in connection with any consumer loan, or for the enforcement or repayment thereof, and any such assignment or order hereafter so taken or given to secure any loan made by any licensee under this act shall be void and of no effect.

b. No consumer lender shall take a lien upon real estate as security for any consumer loan, except a lien created by law upon the recording of a judgment.

c. No licensee shall conduct the consumer loan business within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner.

d. Every multiple installment consumer loan contract, other than an open-end consumer loan contract or a variable rate closed-end consumer loan contract under subsection b. of section 32 of this act, shall provide for repayment of principal and interest combined in installments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no installment is substantially greater in amount than any preceding installment, except that the repayment schedule may reduce or omit installments when necessary because of the seasonal nature of the borrower's income.

e. No person, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount of \$50,000 or less. This prohibition shall apply to any person who, by any device, subterfuge, or pretense, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

f. No consumer loans of the amount or value of \$50,000 or less for which a greater rate of interest, consideration, or charge than is permitted by this act has been charged, contracted for, or received, whenever made, shall be enforced in this State and any person, partnership, association or corporation in any way participating therein in this State shall be subject to the provisions of this act. The foregoing shall not apply to loans legally made in any state which then has in effect a regulatory small loan law similar in principle to this act, but an action to enforce any loan made in any state to a person then residing in this State may be maintained in this State only if the amount of interest, discount, consideration or other charge for that loan, demanded to be paid in the action, does not exceed that permitted to a licensee authorized to engage in the consumer loan business by this act for a loan of the same amount repayable in the same manner.

7. This act shall take effect immediately.

Approved December 31, 2001.

CHAPTER 295

AN ACT requiring health insurance benefits for expenses incurred for colorectal cancer screening and supplementing P.L.1938, c.366

(C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236 (C.17:48E-1 et seq.), chapters 26 and 27 of Title 17B of the New Jersey Statutes, P.L.1992, c.161 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.), and P.L.1973, c.337 (C.26:2J-1 et seq.).

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

C.17:48-6y Hospital service corporation to provide coverage for colorectal cancer screening.

1. Every hospital service corporation contract that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1938, c.366 (C.17:48-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits to any named subscriber or other person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or
- c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the contract.

The provisions of this section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7x Medical service corporation to provide coverage for colorectal cancer screening.

2. Every medical service corporation contract that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.), or approved for

issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits to any named subscriber or other person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or
- c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the contract.

The provisions of this section shall apply to all medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-35.23 Health service corporation to provide coverage for colorectal cancer screening.

3. Every health service corporation contract that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits to any named subscriber or other person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society

and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or
- c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the contract.

The provisions of this section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

C.17B:26-2.1u Individual policy to provide coverage for colorectal cancer screening.

4. Every individual policy that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to N.J.S.17B:26-1 et seq., or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits to any named insured or other person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or
- c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the policy.

The provisions of this section shall apply to all health insurance policies in which the insurer has reserved the right to change the premium.

C.17B:27-46.1y Group policy to provide coverage for colorectal cancer screening.

5. Every group policy that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to N.J.S.17B:27-26 et seq., or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits to any named insured or other person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or
- c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the policy.

The provisions of this section shall apply to all health insurance policies in which the insurer has reserved the right to change the premium.

C.17B:27A-7.7 Individual health benefits plan to provide coverage for colorectal cancer screening.

6. Every individual health benefits plan that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.), or approved for issuance or renewal in this State on or after the effective date of this act, shall provide benefits to any person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which

benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or
- c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan.

The provisions of this section shall apply to all health benefit plans in which the carrier has reserved the right to change the premium.

C.17B:27A-19.9 Small employer health benefits plan to provide coverage for colorectal cancer screening.

7. Every small employer health benefits plan that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c. 162 (C.17B:27A-17 et seq.), or approved for issuance or renewal in this State on or after the effective date of this act, shall provide benefits to any person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

- a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;
- b. chronic inflammatory bowel disease; or

c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan.

The provisions of this section shall apply to all health benefit plans in which the carrier has reserved the right to change the premium.

C.26:2J-4.24 HMO agreement to provide coverage for colorectal cancer screening.

8. Every enrollee agreement that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Health and Senior Services on or after the effective date of this act, shall provide health care services to any enrollee or other person covered thereunder for expenses incurred in conducting colorectal cancer screening at regular intervals for persons age 50 and over and for persons of any age who are considered to be at high risk for colorectal cancer. The methods of screening for which benefits shall be provided shall include: a screening fecal occult blood test, flexible sigmoidoscopy, colonoscopy, barium enema, or any combination thereof; or the most reliable, medically recognized screening test available. The method and frequency of screening to be utilized shall be in accordance with the most recent published guidelines of the American Cancer Society and as determined medically necessary by the covered person's physician, in consultation with the covered person.

As used in this section, "high risk for colorectal cancer" means a person has:

a. a family history of: familial adenomatous polyposis; hereditary non-polyposis colon cancer; or breast, ovarian, endometrial or colon cancer or polyps;

b. chronic inflammatory bowel disease; or

c. a background, ethnicity or lifestyle that the physician believes puts the person at elevated risk for colorectal cancer.

The health care services shall be provided to the same extent as for any other medical condition under the enrollee agreement.

The provisions of this section shall apply to all enrollee agreements in which the health maintenance organization has reserved the right to change the schedule of charges.

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

Approved December 31, 2001.

CHAPTER 296

AN ACT concerning persons seeking hospital care and amending P.L.1992, c.160.

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

1. Section 13 of P.L.1992, c.160 (C.26:2H-18.63) is amended to read as follows:

C.26:2H-18.63 Civil penalties for false statement, misrepresentation.

13. a. Any person or entity who makes a false statement or misrepresentation of a material fact in order to qualify any person or entity for any benefits to which he is not entitled under this act or P.L.1996, c.28 (C.26:2H-18.59e et al.), shall be liable to civil penalties of:

(1) payment of interest on the amount of the excess benefits or subsidy payments at the maximum legal rate in effect on the date the benefits were provided to the person or payment was made to the person or entity, for the period from the date upon which benefits were provided or payment was made to the date upon which repayment is made to the department; and

(2) payment of an amount not to exceed three times the amount of the excess benefit or subsidy payment.

b. A hospital which, without intent to violate this act, obtains a subsidy payment in excess of the amount to which it is entitled, shall be liable to a civil penalty of payment of interest on the amount of the excess payment at the maximum legal rate in effect on the date the payment was made to the hospital, from the date upon which payment was made to the date upon which repayment is made to the department, except that a hospital shall not be liable to the civil penalty when an excess subsidy payment is obtained by the hospital as a result of an error made by the department, as determined by the commissioner.

c. All interest and civil penalties 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.).

d. In order to satisfy any recovery claim asserted against a hospital under this section, whether or not that claim has been the subject of final agency adjudication, the commissioner is authorized to withhold subsidy payments otherwise payable under this act to the hospital.

e. A person who is seeking health care services at a hospital as a patient for a non-emergency or elective procedure who does not furnish proof of health insurance coverage for the services or eligibility for charity care or reduced charge charity care in accordance with the provisions of

section 10 of P.L.1992, c.160 (C.26:2H-18.60), or for any other program of benefits funded by the State, shall be required to provide sworn financial information sufficient to determine eligibility for any such program of benefits. Notwithstanding any other provision of law to the contrary, if the person does not provide the required financial information or the hospital determines that the person is ineligible for any of the aforementioned benefits, the hospital shall be entitled to conclude an arrangement with the person, or an individual acting on the person's behalf, to receive payment from or on behalf of that person as a condition of the provision of health care services to that person.

For the purposes of this subsection, "non-emergency or elective procedure" means a procedure to treat a condition that is not an "emergency" as defined in N.J.A.C.8:38-1.2.

2. This act shall take effect immediately.

Approved December 31, 2001.

CHAPTER 297

AN ACT prohibiting excessive price increases at certain times 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.56:8-107 Findings, declarations relative to excessive price increases at certain times.

1. The Legislature finds and declares that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise. While the pricing of merchandise is generally best left to the marketplace under ordinary conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified price increases in the sale of certain merchandise be prohibited. It is the intention of the Legislature to prohibit excessive and unjustified price increases in the sale of certain merchandise during declared states of emergency in New Jersey.

C.56:8-108 Definitions relative to excessive price increases at certain times.

2. As used in this act:

"Excessive price increase" means a price that is excessive as compared to the price at which the consumer good or service was sold or offered for

sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency;

(2) In those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents an increase of more than 10 percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

"State of emergency" means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator.

C.56:8-109 Unlawful practice to sell merchandise at excessive price during emergency.

3. It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within 30 days of the termination of a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of persons or their property for a price that constitutes an excessive price increase.

4. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 298

AN ACT designating a certain week in October as "School Violence Awareness Week" and supplementing chapter 36 of Title 18A of the New Jersey Statutes.

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

1. The Legislature finds and declares that:

- a. Adolescence and early adulthood are characterized by much higher rates of both perpetration and victimization of violence than other years;
- b. Adolescents have also been shown to have higher rates than younger children and adults for both minor and serious forms of violence;
- c. In 1998, students who were ages 12 through 18 were victims of more than 2.7 million crimes at school;
- d. There were also 60 school-associated violent deaths in the United States during the 1997-98 school year, including 47 homicides;
- e. Fear of violence in schools affects attendance of students and causes attrition of staff; and
- f. It is in the public interest of this State to designate a week in October of each year as "School Violence Awareness Week" to provide students, parents, school district and law enforcement personnel with an opportunity to discuss methods to keep our schools safe from violence, to create school safety plans, and to recognize those students in need of help.

C.18A:36-5.1 "School Violence Awareness Week"; designated.

2. The week beginning with the third Monday in October of each year is designated as "School Violence Awareness Week" in the State of New Jersey. School districts shall observe this week by organizing activities to prevent school violence including, but not limited to, age-appropriate opportunities for student discussion on conflict resolution, issues of student diversity, and tolerance. Law enforcement personnel shall be invited to join members of the teaching staff in the discussions. Programs shall also be provided for school board employees that are designed to help them recognize warning signs of school violence and to instruct them on recommended conduct during an incident of school violence. The public hearing on violence and vandalism, required pursuant to section 1 of P.L.1982, c.163 (C.18A:17-46) as amended by P.L.2001, c.299, shall be held during this week. The Department of Education shall provide guidelines and information to boards of education for use in planning the activities in observance of the week and such funds as are necessary to pay the costs of the required activities and programs.

3. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 299

AN ACT concerning violence in the public schools and amending P.L.1982, c.163.

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

1. Section 1 of P.L.1982, c. 163 (C.18A:17-46) is amended to read as follows:

C.18A:17-46 Reporting of act of violence by school employee; annual report; public hearing.

1. Any school employee observing or having direct knowledge from a participant or victim of an act of violence shall, in accordance with standards established by the commissioner, file a report describing the incident to the school principal in a manner prescribed by the commissioner, and copy of same shall be forwarded to the district superintendent.

The principal shall notify the district superintendent of schools of the action taken regarding the incident. Annually, at a public hearing in October, the superintendent of schools shall report to the board of education all acts of violence and vandalism which occurred during the previous school year. The proceedings of the public hearing shall be transcribed and kept on file by the board of education, which shall make the transcript available to the public. Verification of the annual report on violence and vandalism shall be part of the State's monitoring of the school district, and the State Board of Education shall adopt regulations that impose a penalty on a school employee who knowingly falsifies the report. A board of education shall provide ongoing staff training, in cooperation with the Department of Education, in fulfilling the reporting requirements pursuant to this section. The majority representative of the school employees shall have access monthly to the number and disposition of all reported acts of school violence and vandalism.

The board of education shall file the transcript of the public hearing with the Division of Student Services in the Department of Education by November 1. The division shall review the transcript to ensure compliance with this section of law. The costs of staff training and transcribing the public hearing and printing the transcript shall be paid by the Department of Education.

2. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 300

AN ACT concerning work hours for certain health care facility employees and supplementing P.L.1966, c.113 (C.34:11-56a et seq.).

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

C.34:11-56a31 Establishment of maximum work week for certain health care facility employees.

1. It is declared to be the public policy of this State to establish a maximum work week for certain hourly wage health care facility employees, beyond which the employees cannot be required to perform overtime work, in order to safeguard their health, efficiency, and general well-being as well as the health and general well-being of the persons to whom these employees provide services.

C.34:11-56a32 Definitions relative to work hours for certain health care facility employees.

2. As used in this act:

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and who receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

"On-call time" means time spent by an employee who is not currently working on the premises of the place of employment, but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts" means that the employer shall: a. seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance; b. contact all qualified employees who have made themselves available to work extra time; c. seek the use of per diem staff; and d. seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

C.34:11-56a33 Excessive work shift contrary to public policy.

3. The requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and regularly scheduled daily

work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing, is declared to be contrary to public policy and any such requirement contained in any contract, agreement or understanding executed or renewed after the effective date of this act shall be void.

C.34:11-56a34 Health care facility employee work shift determined; exceptions voluntary.

4. a. Notwithstanding any provision of law to the contrary, no health care facility shall require an employee to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.

b. The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, shall be strictly voluntary and the refusal of any employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

c. The provisions of this section shall not apply in the case of an unforeseeable emergent circumstance when: (1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, and (2) the employer has exhausted reasonable efforts to obtain staffing. In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall not apply in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services.

d. In the event that an employer requires an employee to work overtime pursuant to subsection c. of this section, the employer shall document in writing the reasonable efforts it has exhausted. The documentation shall be made available for review by the Department of Health and Senior Services and the Department of Labor.

C.34:11-56a35 Violations, sanctions.

5. An employer who violates the provisions of this act shall be subject to the sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

C.34:11-56a36 Construction, applicability of act.

6. a. The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of this act.

b. The provisions of this act shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

c. The provisions of this act shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

C.34:11-56a37 Collection of data relative to mandatory overtime prohibition, report.

7. The Departments of Health and Senior Services, Human Services, and Law and Public Safety shall each collect data from all health care facilities which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and shall jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this act.

C.34:11-56a38 Rules, regulations.

8. The Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to carry out the purposes of this act.

9. This act shall take effect 12 months after the date of enactment in the case of an acute care hospital and 18 months after the date of enactment in the case of long-term care facilities and all other health care facilities

Approved January 2, 2002.

CHAPTER 301

AN ACT concerning county bridge commissions, amending various parts of the statutory law and supplementing article 2 of chapter 19 of Title 27 of the Revised Statutes.

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

C.27:19-26.1 Definitions relative to county bridge commission projects, certain.

1. As used in this article:

"Facility charges" mean tolls, rents, rates, fares, fees or other charges in connection with, or for the use or services of, or otherwise relating to, any project owned, leased or controlled by the commission.

"Governmental unit" means the United States of America or the State of New Jersey 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 of New Jersey or any county or municipality.

"Person" means any person, partnership, association, corporation, or entity other than a governmental unit.

"Project" means any project authorized by section 2 of P.L.2001, c.301 (C.27:19-26.2).

C.27:19-26.2 Additional powers of county bridge commission.

2. In addition to the powers set forth in R.S.27:19-26 et seq., a bridge commission established prior to the effective date of P.L.2001, c.301 (C.27:19-26.1 et al.) by a county of the second class shall have the power from time to time and be authorized to:

a. Plan, finance, develop, acquire, construct, purchase, lease, maintain, market, improve and operate any project within the county, including but not limited to, any terminal, terminal facility, transportation facility or any other facility of commerce or economic development activity;

b. Extend credit or make loans to any governmental unit or person for the planning, design, acquisition, construction, improvement, equipping, and furnishing of any project; and

c. Mortgage, pledge, assign or otherwise encumber all or any portion of its revenues and other income, real and personal property, projects and facilities and fix and collect facility charges for the use of any project for the purpose of securing its bonds, notes, and other obligations or otherwise in furtherance of the purposes of this article.

3. R.S.27:19-29 is amended to read as follows:

Tolls, facility charges.

27:19-29. a. The commission may at all times take, demand, and receive of and from any person who shall pass over or use its bridge or bridges and approaches, when such person shall enter upon or attempt to use the same, such rate of toll as may be fixed by it from time to time, for persons, automobiles, wagons, carts or other vehicles or for horses, cows or other animals, or for things not herein enumerated, entering on, passing over or using any such bridge and the approaches thereto.

Any toll gatherer of the commission may stop any person with automobiles, wagons, carts, or other vehicles or things not herein enumerated, and all horses, cows, cattle or other animal or animals, from entering upon, passing over or using any such bridge and the approaches thereto until the toll herein provided for shall have been paid.

b. The commission is authorized to charge and collect tolls, rents, rates, fares, fees or other charges (sometimes in this article referred to as "facility charges") in connection with, or for the use or services of, or otherwise relating to, any project owned, leased or controlled by the commission. Such facility charges may be charged to and collected from any governmental unit or person and such governmental unit or person shall be liable for and shall pay such facility charges to the commission at the time when and place where such facility charges are due and payable.

4. R.S.27:19-31 is amended to read as follows:

Financing of purposes, powers of bridge commission.

27:19-31. (A) To finance any of the purposes or powers provided for in this article, the bridge commission shall from time to time first determine which bridge or bridges, project or projects are to be constructed, acquired, improved or replaced and, for any project which the county unconditionally guarantees the punctual payment of the principal of and interest on any bonds of the commission, seek approval or consent of the board or boards of chosen freeholders for such projects, and upon receiving such approval or consent, or whenever deemed by it necessary or desirable for the purpose of funding or refunding its bonds, notes or other indebtedness or providing funds or reserves for payment or security of any indebtedness including interest or redemption premiums thereon due or to accrue, such commission shall be authorized to issue its bonds, notes or other evidences of indebtedness. The commission may issue such types of bonds, notes or other evidences of indebtedness as it may determine including, without limitation, bonds, notes, or other evidence of indebtedness on which the principal and interest are payable: (1) exclusively from the income and revenues or facility charges of the project financed with the proceeds of such obligations; (2) exclusively from the income and revenues or facility charges of certain designated projects whether or not they are financed in whole or in part with the proceeds of such obligations; or (3) from its revenues generally. In addition, such bonds, notes and other evidence of indebtedness may be secured by a pledge of any grant or contribution from any governmental unit or person or a pledge of any income or revenues of the commission from any source whatsoever, or by a lien, mortgage or pledge upon any one or more of its bridges, approaches or all or any part of the real or personal

property of the commission, including property which is acquired, improved, constructed, financed or refinanced by the proceeds of such bonds, or upon the tolls to be received in the operation of any one or more of such bridges, approaches or other properties or any other income or receipts of the commission, or upon any combination of any of the foregoing. No county other than a county which in accordance with paragraph (B) of this section shall have guaranteed payment of the principal of and interest on any such bonds shall incur any indebtedness of any kind or nature or pledge credit, taxes or taxing power, or any part thereof, in support of such principal and interest.

(B) For the purpose of aiding a commission in the accomplishment of any of the purposes or powers provided for in this article and in marketing any of its bonds, refunding or other, the county which created it may, pursuant to resolution duly adopted by its board of chosen freeholders in the manner provided for adoption of a bond ordinance as provided in the Local Bond Law (N.J.S., Title 40A, chapter 2) and with or without consideration and upon such terms and conditions as may be agreed to by and between the county and the commission, unconditionally guarantee the punctual payment of the principal of and interest on any bonds of the commission. Any guaranty of bonds of a commission made pursuant to this section shall be evidenced by endorsement thereof on such bonds, executed in the name of the county and on its behalf by such officer thereof as may be designated in the resolution authorizing such guaranty, and such county 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 a commission 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 said Local Bond Law, but the principal amount of bonds so guaranteed, shall, after their issuance, be included in the gross debt of such county for the purpose of determining the indebtedness of such county under or pursuant to said 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 third fiscal year beginning next after such time of issuance 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 commission 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 and any other bonds of the commission issued under this article.

5. R.S.27:19-32 is amended to read as follows:

Bonds of bridge commission.

27:19-32. The bonds, notes or other evidences of indebtedness (hereinafter in this section called "bonds") issued by such bridge commissions shall bear interest at such rate or rates per annum which may be fixed or may change, at such time or times and according to such formula or method of determination, payable at such times, and may be sold at either private or public sale, to any person or governmental unit, as the commissions shall determine. Such commissions shall provide the form of such bonds and shall fix the denominations, place or places of payment of principal and interest, the terms and conditions and do all other things that may be necessary for the proper execution and delivery of said bonds.

The proceeds from the sale of any such bonds of a commission shall be deposited and used as provided in any contract or agreement of the commission relative thereto or in the resolution authorizing such bonds, or if not so provided, then as the commission shall direct and solely for the purposes for which such bonds were issued, to be drawn over the signatures of the chairman or vice-chairman, the secretary and the treasurer of the commission, with the surplus, if any, to be paid into the fund hereinafter provided for the payment of the principal and interest of such bonds.

The rates of tolls to be charged for the use of any bridge or bridges operated by a bridge commission under the provisions of this article shall be so fixed and adjusted as to comply with any contract or agreement of the commission relative thereto and, in any event, to provide a fund sufficient to pay the interest on and principal of all bonds issued under this article by the commission, refunding or other and whether or not issued to finance such bridge or bridges, provide funds to pay the cost of maintaining, repairing and operating the bridge or bridges operated by the commission, and maintain such reserves for the foregoing or other expenses as the commission may deem necessary. This article authorizes any commission, subject to the terms of any contract or agreement of the commission, to charge tolls for the use of any one or more of the bridges operated by it or of less than all of such bridges, to charge any such tolls in order to make or secure the payment of any bonds issued by it whether or not the bridge or bridges financed by the issuance of such bonds are subject to tolls imposed by the commission or are still operated by the commission, and to charge any such tolls in order to accumulate reserves for application in future to payment of principal of or interest on bonds issued by it or of costs of

undertaking or accomplishing any of the purposes or powers provided in this article.

The facility charges fixed, charged and collected by the commission with respect to any project shall comply with the terms of any lease or other agreement of the commission with regard to such project, and the facility charges fixed, charged and collected by the commission may be so adjusted that the revenues of the commission will at all times be adequate to pay all expenses of the commission, including the expense of operation and maintenance of any project or other property owned or controlled by the commission, including insurance, improvements, replacements, reconstruction and any other required payments, and to pay the principal of and interest on any bonds, and to maintain such reserves or sinking funds for any of the foregoing purposes as may be required by the terms of any lease or other agreement of the commission or as may be deemed necessary or convenient and desirable by the commission.

All bonds of a bridge commission shall be authorized by resolution of the commission. Any such resolution may contain provisions, and the commission, in order to secure the payment of such bonds and in addition to its other powers, shall have power to agree by provision in such resolution with the several holders of such bonds, and to make, enter into and perform covenants and agreements, as to

- a. the custody, security, use, expenditure or application of the proceeds of any bonds;
- b. the construction and completion, or improvement or replacement, of all or any part of any bridge or bridges or approaches thereto or any project authorized by this article;
- c. the use, regulation, operation, maintenance, insurance or disposition of all or any part of any bridge or bridges or approaches thereto or any project authorized by this article, or restrictions on the exercise of the powers of the commission to dispose, or to limit or regulate the use, of all or any part of the same;
- d. payment of the principal of or interest on any bonds, and the sources and methods thereof, the rank or priority of any bonds as to any lien or security, or the acceleration of the maturity of any bonds;
- e. the use and disposition of any moneys of the commission, including revenues (hereinafter in this section sometimes called "bridge revenues") derived or to be derived from the operation of all or any part of any bridge or bridges or approaches thereto or revenues (hereinafter in this section sometimes called "facility revenues") derived or to be derived from the operation of any project authorized by this article, including any parts thereof theretofore constructed or acquired and any parts, extensions, replacements or improvements thereof thereafter constructed or acquired;

f. pledging, setting aside, depositing or trusteeing all or any part of any bridge revenues, facility revenues or other moneys of the commission and mortgaging, pledging, or otherwise encumbering all or any part of the commission's real or personal property, then owned or acquired, to secure the payment of the principal of or interest on any bonds, or the payment of expenses of operation or maintenance of any bridge or bridges or approaches thereto or any project authorized by this article;

g. the setting aside out of any bridge revenues, facility revenues or other moneys of the commission of reserves and sinking funds, and the source, custody, security, regulation, application and disposition thereof;

h. determination or definition of the bridge revenues, facility revenues, or of the expenses of operation and maintenance of any bridge or bridges or approaches thereto or any project authorized by this article;

i. the rates, tolls, rents, fares, fees, facility charges or other charges in connection with, for the use or services of, or for passage over or through or the use of, or otherwise relating thereto, any bridge or bridges or approaches thereto or any project authorized by this article, including any parts thereof theretofore constructed or acquired and any parts, extensions, replacements or improvements thereof thereafter constructed or acquired, and the fixing, establishment, collection and enforcement of the same, the amount or amounts of bridge revenues or facility revenues to be produced thereby, and the disposition and application of the amounts charged or collected;

j. the assumption or payment or discharge of any indebtedness, liens or other claims relating to any part of any bridge or bridges or approaches thereto or any project authorized by this article or any obligations constituting or which may constitute a lien on any part of the bridge revenues or facility revenues;

k. limitations on the issuance of additional bonds, notes or other evidences of indebtedness or on the incurrence of indebtedness of the commission;

l. limitations on the powers of the commission to construct, acquire or operate, or permit the construction, acquisition or operation of, any structures, facilities or properties which may compete or tend to compete with any bridge or bridges or approaches thereto or any project authorized by this article;

m. payment of costs or expenses incident to the enforcement of any bonds or of the provisions of such resolution or of any covenant or agreement with the holders of any bonds;

n. the procedure, if any, by which the terms of any covenant or agreement with, or duty to, the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given or evidenced; or

o. any other matter or course of conduct which, by recital in such resolution, is declared to further secure the payment of the principal of or interest on the bonds.

All such provisions of said resolution and all such covenants and agreements shall constitute valid and legally binding contracts between the commission and the several holders of the bonds, regardless of the time of issuance of such bonds, and shall be enforceable by any such holder or holders by appropriate action or proceeding, including a proceeding in lieu of prerogative writ, in any court of competent jurisdiction.

6. Section 11 of P.L.1946, c.318 (C.27:19-32.1) is amended to read as follows:

C.27:19-32.1 Covenant of State with bondholders.

11. The State of New Jersey does hereby covenant and agree with the holders of any bonds, notes or other evidences of indebtedness issued by any bridge commission that it will not in any manner limit or alter the power and obligation vested by this article in the commission to fix, establish and collect such tolls or facility charges and revise the same from time to time whenever necessary, as will be sufficient to always comply fully with and fulfill the terms of all agreements and covenants made with the holders of such bonds, notes or other evidences of indebtedness, and will not in any manner impair, alter or abrogate any other power or obligation vested by this article in the commission or the rights and remedies of holders of such bonds, notes or other evidences of indebtedness until all such bonds, notes or other evidences of indebtedness, together with interest thereon and all costs and expenses in connection with any actions or proceedings by or on behalf of the holders thereof, are fully paid and discharged or adequate provision made for the payment or discharge thereof.

7. R.S.27:19-35 is amended to read as follows:

Awarding of contracts, agreements.

27:19-35. Every contract or agreement for the construction, reconstruction, repair, enlargement, extension, renewal, replacement or equipment of bridges or projects, shall be made and awarded pursuant to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

8. Section 1 of P.L.1952, c.338 (C.27:19-36.1) is amended to read as follows:

C.27:19-36.1 Payments to municipality in lieu of taxes.

1. Notwithstanding any of the provisions of the article to which this act is a supplement, any county bridge commission created pursuant to said article may contract with any municipality within which any part of property acquired by such commission for bridge or project purposes is located, for the payment by such commission to such municipality, and may make payments to such municipality, of a fixed annual sum or sums of money in lieu of, or in reimbursement for, the loss of taxes upon such property; provided, however, that such annual sum or sums shall not be in excess of the amount of the municipal taxes upon such property for the year when last assessed prior to the time of its acquisition by the commission.

Any municipality wherein any such bridge property is located is authorized and empowered to enter into such contract with any such commission to accept the payment or payments which the commission is herein authorized and empowered to make.

9. R.S.27:19-37 is amended to read as follows:

Records, semiannual statements, examination.

27:19-37. The commission shall keep accurate records of all acts, the property intrusted to it, the cost of the bridge or bridges, project or projects, and incidents thereto, the expenditures for maintaining, repairing and operating the same, and the daily tolls or facility charges collected, which records shall be public records and the property of the county. A semiannual statement of the daily tolls shall be published on each bond interest date in the official newspaper of the county. The governing body of the county shall have power to examine the accounts at any time, to call for any reports at any time in its discretion, and to require the commission and its employees to appear before it to report or testify at any time.

C.27:19-26.3 Empowerment to enter into lease, agreement.

10. Any governmental unit or person is hereby empowered to enter into and perform any lease or other agreement with the commission for the lease to or use by such governmental unit or person of all or any part of any project. Any such lease or other agreement may provide for the payment to the commission by such governmental unit or persons annually or otherwise of such sum or sums of money, computed at fixed amounts or by any formula or in any other manner, as may be fixed in or pursuant thereto. Any such lease or other agreement may be made and entered into for a term beginning currently or at some future or contingent date and with or without consideration and for a specified or unlimited time and on any terms and conditions which may be approved by such governmental unit or person and which may be agreed to by the commission in conformity with its contracts

with the holders of any bonds, and shall be valid and binding on such governmental unit or person whether or not an appropriation is made thereby prior to authorization or execution of such lease or other agreement. Every such governmental unit or person is hereby authorized and directed to do and perform any and all acts and things necessary, convenient or desirable to carry out and perform any such lease or other agreement entered into by it and to provide for the payment or discharge of any obligation thereunder in the same manner as other obligations of such governmental unit or person.

C.27:19-26.4 Powers of county, municipality.

11. For the purpose of aiding a commission and co-operating in the planning, undertaking, acquisition, construction or operation of any project, the county or any municipality in any such county may:

a. acquire real property in its name for such project or for the widening of existing roads, streets, parkways, avenues or highways or for new roads, streets, parkways, avenues or highways to any such project, 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, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

c. in consultation with the Department of Transportation, review and coordinate the development of improvement projects involving the department or New Jersey Transit Corporation transportation facilities that the commission may undertake; and

d. do any and all things necessary or convenient to aid and co-operate in the planning, undertaking, construction or operation of any such project, and cause services to be furnished to the commission of any character which such county or municipality is otherwise empowered to furnish, and to incur the entire expense thereof.

C.27:19-26.5 Empowerment to convey land to commission.

12. Any county by resolution of its governing body, municipality by ordinance of its governing body, governmental unit or person is hereby empowered, without any referendum or public or competitive bidding, to sell, lease, lend, grant or convey to a commission, or to permit a commission to use, maintain or operate as part of any project, any real or personal property which may be necessary or useful and convenient for the purposes of the commission and accepted by the commission. Any such sale, lease, loan, grant, conveyance or permit may be made or given with or without

consideration and for a specified or an unlimited period of time and under any agreement and on any terms, and conditions which may be approved by such county, municipality, governmental unit or person and which may be agreed to by the commission in conformity with its contracts with the holders of any bonds. Subject to any such contracts with the holders of bonds, the commission may enter into and perform any and all agreements with respect to property so purchased, leased, borrowed, received or accepted by it, including agreements for the assumption of principal or interest or both of indebtedness of such county, municipality, governmental unit or person or of any mortgage or lien existing with respect to such property for the operation and maintenance of such property as part of any project.

13. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 302

AN ACT establishing Operation Recognition in the Department of Education and supplementing chapter 7C 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:7C-4.1 "Operation Recognition."

1. a. The Department of Education, in consultation with the Department of Military and Veterans' Affairs, shall establish a program which shall be known as "Operation Recognition." The purpose of Operation Recognition is to award State-endorsed high school diplomas to World War I and World War II veterans who left high school prior to graduation to enter United States military service.

b. A person shall be eligible to receive a State-endorsed diploma under Operation Recognition if the person:

(1) is an honorably discharged World War I veteran who served between April 6, 1917 and November 11, 1918 or an honorably discharged World War II veteran who served between September 16, 1940 and December 31, 1946; and

(2) attended a high school in the State but left prior to graduation in order to serve in the armed forces of the United States, and did not receive a high school diploma as a consequence of such service.

A State-endorsed diploma may be issued under Operation Recognition posthumously. A veteran who meets the eligibility criteria set forth in this section and who passed the General Educational Development Test, GED, may also receive a State-endorsed diploma under Operation Recognition.

c. A veteran who meets the eligibility criteria set forth in subsection b. of this section may apply to the Department of Education to receive a State-endorsed high school diploma. In the case of a veteran who meets the eligibility criteria set forth in subsection b. of this section but who is deceased, the family of the veteran may apply to the department to receive a State-endorsed high school diploma on behalf of the veteran. Upon approval of an application, the department shall issue a State-endorsed high school diploma to the veteran or the veteran's family, as appropriate. The diploma shall indicate the veteran's high school of attendance.

d. The Department of Education, in cooperation with the Department of Military and Veterans' Affairs, shall:

(1) develop an application procedure for obtaining a State-endorsed high school diploma under Operation Recognition, including a method for verifying military service and the high school which the veteran attended prior to military service;

(2) distribute applications for participation by veterans in Operation Recognition to school districts and to local veterans' organizations throughout the State; and

(3) provide information to any school district that is interested in hosting a diploma ceremony on or around Veterans' Day for veterans who received State-endorsed high school diplomas pursuant to Operation Recognition and attended a high school within the district.

e. For the purposes of this section, "veteran" means an honorably discharged officer, soldier, sailor, marine, airman, nurse or army field clerk who served in the active military or naval service of the United States in the wars listed in subsection b. of this section. A "veteran" also means any honorably discharged member of the American Merchant Marine or the United States Coast Guard who served during World War I or World War II.

2. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 303

AN ACT concerning the school curriculum and supplementing chapter 35 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:35-4.19 Short title.

1. This act shall be known as the "AIDS Prevention Act of 1999."

C.18A:35-4.20 Sex education programs to stress abstinence.

2. Any sex education that is given as part of any planned course, curriculum or other instructional program and that is intended to impart information or promote discussion or understanding in regard to human sexual behavior, sexual feelings and sexual values, human sexuality and reproduction, pregnancy avoidance or termination, HIV infection or sexually transmitted diseases, regardless of whether such instruction is described as, or incorporated into a description of "sex education," "family life education," "family health education," "health education," "family living," "health," "self esteem," or any other course, curriculum program or goal of education, and any materials including, but not limited, to handouts, speakers, notes or audiovisuals presented on school property concerning methods for the prevention of acquired immune deficiency syndrome (HIV/AIDS), other sexually transmitted diseases and of avoiding pregnancy, shall stress that abstinence from sexual activity is the only completely reliable means of eliminating the sexual transmission of HIV/AIDS and other sexually transmitted diseases and of avoiding pregnancy.

C.18A:35-4.21 Abstinence from sexual activity stressed in curriculum.

3. The board of education shall include in its family life and HIV/AIDS curriculum instruction on reasons, skills and strategies for remaining or becoming abstinent from sexual activity. Any instruction concerning the use of contraceptives or prophylactics such as condoms shall also include information on their failure rates for preventing pregnancy, HIV and other sexually transmitted diseases in actual use among adolescent populations and shall clearly explain the difference between risk reduction through the use of such devices and risk elimination through abstinence.

C.18A:35-4.22 Avoidance of IV drug use stressed.

4. In addition, any course, program or material concerning methods for the prevention of HIV/AIDS shall stress the importance of avoiding intravenous drug use.

5. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 304

AN ACT concerning adult family care, supplementing Title 26 of the Revised Statutes, and amending P.L.1978, c.159 and P.L.1979, c.496.

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

C.26:2Y-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Adult Family Care Act."

C.26:2Y-2 Findings, declarations relative to adult family care.

2. The Legislature finds and declares that:

a. In the absence of appropriate housing with supportive services, many elders or people with physical disabilities are often subject to inappropriate, premature, or overextended institutionalization. This results in the overutilization of costly services and the negative impact of the institutional environment on the individual's emotional and physical well-being. A need exists to fill this gap in the housing continuum between independent living and institutionalization for those elders and physically disabled citizens who are in need of shelter and services to remain in the community.

b. Adult family care has proven to be a successful and cost-effective means of fulfilling basic shelter and everyday service needs of elders and physically disabled adults, thereby enabling them to preserve their independence, choice and dignity in a secure environment.

c. Therefore, it is the policy of this State to promote the health, safety and welfare of its elderly and physically disabled citizens by encouraging the development of adult family care homes for elders and physically disabled adults and to provide for the licensing of caregivers and regulation of such adult family care homes by the Department of Health and Senior Services.

C.26:2Y-3 Definitions relative to adult family care.

3. As used in this act:

"Activities of daily living" or "ADL" means functions and tasks for self-care which are performed either independently or with supervision or assistance, which include, but are not limited to, mobility, transferring, walking, grooming, bathing, dressing and undressing, eating and toileting.

"Adult family care" means a 24-hour per day living arrangement for persons who, because of age or physical disability, need assistance with activities of daily living, and for whom services designed to meet their

individual needs are provided by licensed caregivers in approved adult family care homes.

"Adult family care caregiver" means a person licensed to provide care and services in the daily operation of an adult family care home, but does not include the owner or lessor of the building in which the adult family care home is situated unless the owner or lessor is also the provider of care and services in the adult family care home .

"Adult family care home" means a residence regulated by the department and housing no more than three clients, in which personal care and other supportive services are provided by an individual who has been licensed by the department as an adult family care caregiver. "Adult family care home" shall not include a rooming or boarding house used and operated under license of the Department of Community Affairs pursuant to P.L.1979, c.496 (C.55:13B-1 et seq.).

"Adult family care sponsor agency" means an entity licensed by the department to administer an adult family care program within a given area, which provides essential administrative and clerical support services to two or more caregivers, and which shall not be considered to be a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2).

"Client" means an elder or person with physical disabilities enrolled in adult family care.

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Elder" means a person sixty years of age or older.

C.26:2Y-4 Licensing required for operation of adult family care home.

4. a. No person may operate an adult family care home unless the person is licensed as an adult family care caregiver in accordance with this act. A person may not be licensed as an adult family care caregiver unless that person owns or rents the home that is to be utilized as an adult family care home, resides in that home on a full-time basis and has resided in the municipality in which the adult family care home is located for one year prior to the granting of an initial license.

b. Application for licensure as an adult family care caregiver shall be made upon forms prescribed by the department. The department shall charge a single, non-refundable fee for the filing of an application for the issuance of a license and a single, non-refundable fee for any renewal thereof, as it shall from time to time fix in rules or regulations, except that neither fee shall exceed \$200.

c. The department shall issue a license as an adult family care caregiver to an applicant if it finds that:

(1) the applicant and the adult family care home identified in the application are fit and adequate, in accordance with the qualifications and standards established by regulation of the commissioner;

(2) there is reasonable assurance that care will be provided to clients in the manner required by this act and any rules or regulations adopted pursuant thereto; and

(3) there are sufficient indicia of fiscal responsibility such that the applicant will be able to maintain residence at the adult family care home with minimal likelihood of eviction or mortgage foreclosure during the term of licensure.

All licenses issued by the department shall be effective for up to two years from the date of issuance unless revoked in accordance with the provisions of this act.

d. An adult family care caregiver license shall specify both the name of the licensee and the location of the particular home in which clients will be housed. An adult family care caregiver's license is not transferable and shall apply only to the location and person indicated on the license.

e. Upon issuance of a license to an adult family care caregiver, the department shall provide a copy of the license to the municipality in which the adult family care home is located.

f. Upon receipt of a license as an adult family care caregiver, the caregiver shall provide notification of the license to the police department, fire department and ambulance corps that serve the municipality in which the adult family care home is located for their planning purposes.

g. For three years following the date of this act, a licensed caregiver shall operate under a contractual agreement with an adult family care sponsor agency to provide services to individuals enrolled in adult family care. At the end of this three-year period, the department may extend this requirement, at its discretion, by regulation.

C.26:2Y-5 Criminal history record background check for applicants for licensure as adult family caregiver.

5. a. The department shall establish a program to check the criminal history record background of any applicant for licensure as an adult family care caregiver as well as any person who may act as a substitute caregiver, as defined by regulation of the commissioner, and any non-client 18 years of age or above who resides in the adult family care home. The criminal history record background check shall include the exchange of fingerprint data with, and the receipt of criminal history record information from, the Federal Bureau of Investigation and the Division of State Police.

b. A person shall be disqualified from being licensed as an adult family care caregiver or acting as a substitute caregiver if the check of his criminal

history record background reveals a conviction for any of the following crimes or offenses, and a home shall be disqualified from being approved as an adult family care home if the criminal history record background check of any non-client 18 years of age or older who resides in the home reveals a conviction for any of the following crimes or offenses:

(1) In New Jersey, any crime or disorderly persons offense:

(a) involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq., or N.J.S.2C:15-1 et seq.; or

(b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.; or

(c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(d) involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10; or

(e) any other crime or disorderly persons offense substantially related to the qualifications or duties of an adult family care caregiver.

(2) In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

c. Notwithstanding the provisions of subsection b. of this section to the contrary, an applicant shall not be denied a license when the person found to have a conviction as specified in subsection b. of this section affirmatively provides evidence satisfactory to the department of the person's rehabilitation. In determining the person's rehabilitation, the department shall consider the following factors, as applicable:

(1) the nature and seriousness of the offense;

(2) the circumstances under which the offense occurred;

(3) the date of the offense;

(4) the age of the person when the offense was committed;

(5) whether the offense was an isolated or repeated incident;

(6) any social conditions which may have contributed to the offense;

and

(7) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

d. Upon receipt of the criminal history record and a determination that an applicant should be disqualified from acting as a caregiver or that a home should be disqualified as an adult family care home, the department shall so

notify the applicant in writing. The notice shall specify the convictions upon which the disqualification is based.

C.26:2Y-6 Licensure required for adult family care sponsor agency.

6. a. No person, firm, partnership, corporation, limited liability company or association may operate, conduct or hold itself out to the public as an adult family care sponsor agency unless it is duly licensed as an adult family care sponsor agency in accordance with the provisions of this act.

b. Application for a license as an adult family care sponsor agency shall be made upon forms prescribed by the department. The department shall charge a single, non-refundable fee for the filing of an application for the issuance of a license and a single, non-refundable fee for any renewal thereof, as it shall from time to time establish by regulations, except that neither of these fees shall exceed \$4,000.

c. An applicant for licensure as an adult family care sponsor agency shall comply with all procedures and meet all standards and requirements established by regulation of the commissioner.

C.26:2Y-7 Regulation of family care home.

7. a. An adult family care home shall be regulated as a residential home and shall meet all State and local building, sanitation, utility and fire code requirements applicable to single family dwellings; provided however, that the commissioner may require compliance with fire code requirements applicable to boarding houses and residential health care facilities if so warranted by the capabilities of the residents.

b. The department shall be responsible for inspecting the physical plant of each adult family care home initially and on an annual basis. In addition to any licensing fee required under this act, the department may charge an annual, non-refundable fee for inspection of any adult family care home, as shall be established from time to time by regulation of the commissioner.

c. The department's staff shall be permitted access to enter and inspect an adult family care home at any time. The department's staff shall be permitted access to the clients of the adult family care home in order to interview them privately and to inspect client records.

d. The department shall be responsible for providing to the adult family care caregiver a report of the most recent inspection of the home, written in clear, concise language readily comprehensible to the average person.

e. The adult family care caregiver shall post the inspection report in the entry to, or other equally prominent location in, the home and shall, upon request, provide a copy of the report to each client of, or person applying for admission to, the home, or the legal representative, guardian or conservator of the client or prospective client.

f. The Office of The Ombudsman for the Institutionalized Elderly shall have jurisdiction to take all actions authorized pursuant to P.L.1977, c.239 (C.52:27G-1 et seq.) with respect to adult family care homes.

C.26:2Y-8 Regulations to establish minimum standards.

8. The commissioner shall by regulation establish minimum standards to ensure the health, safety and well-being of each client of the adult family care home, including: requirements for the physical site of the home and maintenance standards; rules governing acceptance of clients; services that must be provided to all clients and standards for these services; and components of quality care, including, but not limited to, qualifications and training of adult family care caregivers, safety of the caregiving environment, coordination of services and comprehensiveness of care.

C.26:2Y-9 Violations, penalties.

9. a. A person, firm, partnership, corporation, limited liability company or association that operates or conducts an adult family care home or adult family care sponsor agency without first obtaining the license required by this act, or that operates an adult family care home or adult family care sponsor agency after a revocation or suspension of that license, shall be liable to a penalty of not more than \$2,500 as provided for by regulation for each day of operation in violation hereof for the first offense and for any subsequent offense.

b. A person, firm, partnership, corporation, limited liability company or association that, except in cases of an emergency, maintains more clients in an adult family care home than it is licensed to maintain, shall be subject to penalty, in an amount equal to the daily charge collected from those clients plus \$25 for each day multiplied by the number of clients maintained over the authorized limit.

c. In addition to the authority granted to the department by this act or any other law, the department, after serving an applicant or licensee with specific charges in writing, may: assess penalties and collect the same within the limitations imposed by this act; deny a license; grant probationary or provisional status to a licensee; relocate clients; or revoke or suspend any and all licenses granted under authority of this act to a person, firm, partnership, corporation, limited liability company or association violating or failing to comply with the provisions of this act, or the rules and regulations adopted pursuant thereto.

d. A person, firm, partnership, corporation, limited liability company or association that violates any rule or regulation adopted in accordance with this act as the same pertains to the care of clients or physical plant standards shall be subject to a monetary penalty of not more than \$2,500 as provided for by regulation for each day in violation of the rule or regulation.

e. Notice of the assessment of penalties, revocation, suspension, placement on probationary or provisional license status, relocation of clients or denial of a license, together with a specification of charges, shall be served on the applicant or licensee, personally or sent by certified mail to the address of record. The notice shall set forth the particular reasons for the administrative action being undertaken.

f. The commissioner or his designee shall arrange for prompt and fair hearings on all contested cases, render written decisions stating conclusions and reasons therefor upon each matter so heard, and may enter orders of denial, suspension, placement on probationary or provisional license status, relocation of clients or revocation, consistent with the circumstances in each case, and may assess penalties and collect the same within the limitations imposed by this act.

g. In the event of closure of an adult family care home, clients who are relocated by the department may be entitled to benefits pursuant to the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) or the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.), and any regulations adopted pursuant thereto.

C.26:2Y-10 Rights of client of adult family care home.

10. a. A client of an adult family care home may not be deprived of any civil or legal rights, benefits or privileges guaranteed by law, the New Jersey Constitution, or the Constitution of the United States solely by reason of status as a resident in the home. In addition, each client has the right to:

- (1) be treated as an adult, with respect, dignity, courtesy and consideration, and to have individual needs for privacy recognized and upheld;
- (2) be informed of all client rights and house rules;
- (3) make choices with respect to his care, services and lifestyle;
- (4) be informed of his condition and the right to consent to or refuse care and services;
- (5) participate, to the fullest extent that the client is able, in planning for his own care and services;
- (6) receive appropriate care and services, as needed;
- (7) a safe and secure environment;
- (8) be free from abuse, exploitation and neglect;
- (9) complete privacy when receiving care and services;
- (10) associate and communicate privately with any person the client chooses;
- (11) send and receive personal mail unopened;
- (12) participate in activities of social, religious and community groups;
- (13) have medical and personal information kept confidential;

(14) keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;

(15) manage his own money and financial affairs, unless legally restricted from doing so;

(16) receive a written agreement regarding the care and services to be provided, and the terms and conditions for termination of residency from the home;

(17) be provided with a written statement of the rates to be charged, and 30 days' written notice of any change in the rates;

(18) practice the religion of his choice, or to abstain from religious practice;

(19) be free of discrimination in regard to race, color, national origin, sex or religion; and

(20) make suggestions and complaints without fear of retaliation.

b. The adult family care caregiver shall ensure that a written notice of the rights set forth in this section is given to every client. The caregiver shall also post this notice in the entry to, or other equally prominent location in, the adult family care home. This notice shall also include the name, address and telephone number of the Office of the Ombudsman for the Institutionalized Elderly.

11. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to read as follows:

C.40:55D-66.1 Community residences, shelters, adult family care homes; permitted use in residential districts.

1. Community residences for the developmentally disabled, community shelters for victims of domestic violence, community residences for the terminally ill, community residences for persons with head injuries, and adult family care homes for elderly persons and physically disabled adults shall be a permitted use in all residential districts of a municipality, and the requirements therefor shall be the same as for single family dwelling units located within such districts.

12. Section 3 of P.L.1979, c.496 (C.55:13B-3) is amended to read as follows:

C.55:13B-3 Terms defined.

3. As used in this act:

a. "Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or

intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guest house wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only, any foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1), any community residence for the developmentally disabled and any community residence for the mentally ill as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), any adult family care home as defined in section 3 of P.L.2001, c.304 (C.26:2Y-3), any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education for the use of its students, any building arranged for single room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the New Jersey Commission on Higher Education, any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the commissioner, and any owner-occupied, one-family residential dwelling made available for occupancy by not more than six guests, where the primary purpose of the occupancy is to provide charitable assistance to the guests and where the owner derives no income from the occupancy. A dwelling shall be deemed "owner-occupied" within the meaning of this section if it is owned or operated by a nonprofit religious or charitable association or corporation and is used as the principal residence of a minister or employee of that corporation or association. For any such dwelling, however, fire detectors shall be required as determined by the Department of Community Affairs.

b. "Commissioner" means the Commissioner of the Department of Community Affairs.

c. "Financial services" means any assistance permitted or required by the commissioner to be furnished by an owner or operator to a resident in the management of personal financial matters, including, but not limited to, the cashing of checks, holding of personal funds for safekeeping in any manner or assistance in the purchase of goods or services with a resident's personal funds.

d. "Limited tenure" means residence at a rooming or boarding house on a temporary basis, for a period lasting no more than 90 days, when a resident either maintains a primary residence at a location other than the rooming or boarding house or intends to establish a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

- e. "Operator" means any individual who is responsible for the daily operation of a rooming or boarding house.
- f. "Owner" means any person who owns, purports to own, or exercises control of any rooming or boarding house.
- g. "Personal services" means any services permitted or required to be furnished by an owner or operator to a resident, other than shelter, including, but not limited to, meals or other food services, and assistance in dressing, bathing or attending to other personal needs.
- h. "Rooming house" means a boarding house wherein no personal or financial services are provided to the residents.
- i. "Single room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), and which is not used for limited tenure occupancy in a hotel, motel or established guest house, regardless of the number of individuals occupying any room or rooms.
- j. "Unit of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged or designed to be occupied for sleeping or dwelling purposes by one or more persons.
- k. "Alzheimer's disease and related disorders" means a form of dementia characterized by a general loss of intellectual abilities of sufficient severity to interfere with social or occupational functioning.
- l. "Dementia" means a chronic or persistent disorder of the mental processes due to organic brain disease, for which no curative treatment is available, and marked by memory disorders, changes in personality, deterioration in personal care, impaired reasoning ability and disorientation.

C.26:2Y-11 Rules, regulations.

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

14. This act shall take effect on the 90th day after enactment, except that the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 2, 2002.

CHAPTER 305

AN ACT concerning voluntary contributions through gross income tax returns to a New Jersey Prostate Cancer Research Fund, supplementing P.L.1983, c.6 (C.52:9U-1 et seq.) and chapter 9 of Title 54A of the New Jersey Statutes.

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

C.54A:9-25.21 "New Jersey Prostate Cancer Research Fund"; tax return contribution.

1. a. There is established in the Department of the Treasury a special fund to be known as the "New Jersey Prostate Cancer Research Fund."

b. Each taxpayer shall have the opportunity to indicate on the taxpayer's New Jersey gross income tax return that a portion of the taxpayer's tax refund or an enclosed contribution shall be deposited in the special fund.

c. 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 "New Jersey Prostate Cancer Research Fund."

C.54A:9-25.22 Appropriation of monies deposited.

2. The Legislature shall annually appropriate all monies deposited in the "New Jersey Prostate Cancer Research Fund" established pursuant to this act to the New Jersey State Commission on Cancer Research, established pursuant to P.L.1983, c.6 (C.52:9U-1 et seq.) for prostate cancer research projects. As used in this act, "prostate cancer research project" means a scientific research project which is approved by the commission and which focuses on the causes, prevention, screening, treatment or cure of prostate cancer and may include, but is not limited to, basic, behavioral, clinical, demographic, epidemiologic and psychosocial research.

C.52:9U-6.2 Applications for grants.

3. The New Jersey State Commission on Cancer Research shall solicit, receive, evaluate and approve applications of qualified research institutions for grants from the "New Jersey Prostate Cancer Research Fund," established pursuant to section 1 of P.L.2001, c.305 (C.54A:9-25.21), to conduct research relating to the causes, prevention, screening, treatment and cure of prostate cancer. As used in this section, "qualified research institution" may include academic medical institutions, State or local government agencies,

public or private organizations within New Jersey, and any other institution approved by the commission, which is conducting a prostate cancer research project.

4. This act shall take effect immediately and sections 1 and 2 shall apply to taxable years commencing on or after January 1 following enactment.

Approved January 2, 2002.

CHAPTER 306

AN ACT appropriating moneys from the "1995 Farmland Preservation Fund" and the "Garden State Farmland Preservation Trust Fund" for farmland preservation projects.

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

1. a. There is appropriated from the "1995 Farmland Preservation Fund," established pursuant to section 25 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, to the State Agriculture Development Committee the sum of \$2,883,500 for the purpose of providing for the cost of acquisition by the committee of development easements on farmland for projects approved as eligible for such funding pursuant to subsection b. of this section. The total expenditure by the State Agriculture Development Committee from the list of eligible projects in subsection b. of this section totaling \$3,150,000 shall not exceed \$2,883,500.

b. The following projects are eligible for funding with the moneys appropriated pursuant to subsection a. of this section:

Project (Farm)	County	Municipality	Acres (+/-)	Amount Not to Exceed
Wolfe, D. & S.	Burlington	Pemberton Twp	72	\$ 200,000
Spadoni, A. & R.	Cumberland	Vineland	31	175,000
Rochelle, P. & S.	Hunterdon	Alexandria	38	200,000
Fulper, F. & R. & R. & S.	Hunterdon	West Amwell	52	350,000
Fulper, R. & S. & R.	Hunterdon	West Amwell	41	325,000

Danch, S.	Mercer	Hamilton	20	150,000
Widman, C. & M.	Mercer	Hopewell Twp	13	125,000
Yurick, A. & E.	Salem	Elsinboro	47	50,000
Szczechowski, J.	Salem	Lower Alloways Creek	97	125,000
Dare, D.	Salem	Upper Pittsgrove	73	200,000
DelMonte, P.	Salem	Upper Pittsgrove	27	75,000
Fuller, R. & S.	Salem	Upper Pittsgrove	27	75,000
Miller, P.	Salem	Upper Pittsgrove	44	100,000
Platt, W.	Salem	Upper Pittsgrove	32	75,000
Salem, Jr., N.	Salem	Upper Pittsgrove	102	175,000
Goodbody	Warren	Hope	186	750,000

2. a. There is appropriated from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L.1999, c.152 (C.13:8C-20), to the State Agriculture Development Committee the sum of \$3,954,019 for the purpose of providing for the cost of acquisition by the committee of development easements on farmland for projects approved as eligible for such funding pursuant to subsection b. of this section. The total expenditure by the State Agriculture Development Committee from the list of eligible projects in subsection b. of this section totaling \$4,275,000 shall not exceed \$3,954,019.

b. The following projects are eligible for funding with the moneys appropriated pursuant to subsection a. of this section:

Project (Farm)	County	Municipality	Acres (+/-)	Amount Not to Exceed
Watson, S.	Cumberland	Greenwich	393	\$ 550,000
Creamer, A.	Cumberland	Upper Deerfield	34	100,000
Modica, J. & C.	Hunterdon	Bethlehem	83	575,000
Johnson, E. & G.	Hunterdon	East Amwell	64	475,000
DeSapio, A. & S.	Hunterdon	Kingwood	115	675,000
Jannuzi, J.	Hunterdon	Raritan	20	150,000
Faille, M. & K.	Mercer	Hopewell Twp	38	400,000
Sessa, M. & I.	Monmouth	Colts Neck	31	450,000
Kelly, W. & E.	Salem	Mannington	75	200,000
Kelly, W. & E.	Salem	Pilesgrove	106	275,000
Santini, R. & S.	Warren	Pohatcong	71	425,000

3. There is appropriated from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L.1999, c.152 (C.13:8C-20), to the State Agriculture Development Committee the sum of \$2,309,573 for the purpose of providing for the cost of acquisition by the committee of fee simple titles to farmland for farmland preservation purposes. Any such farmland acquired in fee simple with moneys appropriated pursuant to this section shall be offered for resale or lease with agricultural deed restrictions.

4. a. There is appropriated from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L.1999, c.152 (C.13:8C-20), to the State Agriculture Development Committee the sum of \$5,490,428 for the purpose of providing for the cost of acquisition by the committee of development easements on farmland in the pinelands area for projects approved as eligible for such funding pursuant to subsection b. of this section.

b. The following projects are eligible for funding with the moneys appropriated pursuant to subsection a. of this section:

Project (Farm)	County	Municipality	Acres (+/-)
John, J. B.	Atlantic	Buena Boro	20
Kertz, E.	Atlantic	Galloway	30
Kertz, J.	Atlantic	Galloway	60
Vaccarella, A.	Atlantic	Galloway	15
Atlantic Blueberry Co.	Atlantic	Hamilton	1,507
Berenato, A.	Atlantic	Hammonton	62
Betts & Betts LLC	Atlantic	Hammonton	23
Macrie, P., M. & N.	Atlantic	Hammonton	120
Wuillerman, A. & C.	Atlantic	Hammonton	73
Franceschini, R.	Atlantic	Mullica	37
Joseph J. White, Inc.	Burlington	Pemberton Twp	592
Kaiser, B.	Burlington	Pemberton Twp	33
Kaiser, B.	Burlington	Pemberton Twp	19
Karlberg, E. & N.	Burlington	Pemberton Twp	134
Reid Blueberry Farm, Inc.	Burlington	Pemberton Twp	114
Adams, Jr., G. & G.	Burlington	Shamong	64
Alloway, S.	Burlington	Southampton	202
Alloway, S.	Burlington	Southampton	72
Alloway, S.	Burlington	Southampton	40
Poinsett, J. L.	Burlington	Southampton	97
Vacirca, S. & S.	Burlington	Southampton	52

Eckert, L. & P.	Burlington	Tabernacle	70
Cutts, W. J.	Burlington	Washington	261
Betts & Betts	Camden	Waterford	33
Augustine, W. J.	Camden	Winslow	67
Curcio, M. A.	Camden	Winslow	35
Ferrucci Bros., Inc.	Gloucester	Franklin	96

5. a. The expenditure of the sums appropriated by section 1 of this act is subject to the provisions and conditions of P.L.1999, c.152 (C.13:8C-1 et seq.), P.L.1995, c.204, and P.L.1983, c.32 (C.4:1C-11 et seq.), as appropriate.

b. (1) Except as otherwise provided pursuant to paragraph (2) of this subsection, the expenditure of the sums appropriated by sections 2 through 4 of this act is subject to the provisions and conditions of P.L.1999, c.152 (C.13:8C-1 et seq.), and P.L.1983, c.32 (C.4:1C-11 et seq.), as appropriate.

(2) The requirements and provisions of subsection h. of section 23 of P.L.1999, c.152 (C.13:8C-23) shall not apply to the appropriations made pursuant to sections 2 through 4 of this act.

6. This act shall take effect immediately.

Approved January 2, 2002.

CHAPTER 307

AN ACT concerning professional licensing boards and revising various parts of the statutory law.

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

1. Section 5 of P.L.1978, c.73 (C.45:1-18) is amended to read as follows:

C.45:1-18 Investigative powers of boards, director or attorney general.

5. Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;

b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;

c. Inspect any premises from which a practice or activity subject to an act or regulation administered by the board is conducted;

d. Examine any goods, ware or item used in the rendition of a practice or activity subject to an act or regulation administered by the board;

e. Examine any record, book, document, account or paper prepared or maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in practices subject to an act or regulation administered by the board. Nothing in this subsection shall require the notification or consent of the person to whom the record, book, account or paper pertains, unless otherwise required by law;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used, prepared or maintained by or for any board licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in a practice or activity subject to an act or regulation administered by the board. In such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection; and

g. Require any board licensee, permit holder or registered or certified person to submit to an assessment of skills to determine whether the board licensee, permit holder or registered or certified person can continue to practice with reasonable skill and safety.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and the board, director or Attorney General may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.

2. Section 9 of P.L.1978, c.73 (C.45:1-22) is amended to read as follows:

C.45:1-22 Additional, alternative penalties.

9. In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, registration or certificate issued by it, a board may, after affording an opportunity to be heard:

a. Issue a letter of warning, reprimand, or censure with regard to any act, conduct or practice which in the judgment of the board upon consideration of all relevant facts and circumstances does not warrant the initiation of formal action;

b. Assess civil penalties in accordance with this act;

c. Order that any person violating any provision of an act or regulation administered by such board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;

d. Order any person found to have violated any provision of an act or regulation administered by such board to restore to any person aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice; provided, however, no board shall order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating the act or regulation administered by the board;

e. Order any person, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions;

f. Order any person, as a condition for continued, reinstated or renewed licensure, to submit to any medical or diagnostic testing and monitoring or psychological evaluation which may be required to evaluate whether continued practice may jeopardize the safety and welfare of the public;

g. Order any person, as a condition for continued, reinstated or renewed licensure, to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety, and to take and successfully complete educational training determined by the board to be necessary;

h. Order any person, as a condition for continued, reinstated or renewed licensure, to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety, and to submit to any supervision, monitoring or limitation on practice determined by the board to be necessary.

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice

violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order. If, upon review of the Attorney General's application, the board determines that, although no palpable demonstration of a clear and imminent danger has been made, the licensee's continued unrestricted practice pending plenary hearing may pose a risk to the public health, safety and welfare, the board may order the licensee to submit to medical or diagnostic testing and monitoring, or psychological evaluation, or an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety.

In any administrative proceeding commenced on a complaint alleging a violation of an act or regulation administered by a board, such board may issue subpoenas to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

3. Section 12 of P.L.1978, c.73 (C.45:1-25) is amended to read as follows:

C.45:1-25 Violations, penalties.

12. a. Any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. For the purpose of construing this section, each act in violation of any provision of an act or regulation administered by a board shall constitute a separate violation and shall be deemed a second or subsequent violation under the following circumstances:

(1) an administrative or court order has been entered in a prior, separate and independent proceeding;

(2) the person is found within a single proceeding to have committed more than one violation of any provision of an act or regulation administered by a board; or

(3) the person is found within a single proceeding to have committed separate violations of any provision of more than one act or regulation administered by a board.

b. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of any board

for the collection or enforcement of civil penalties for the violation of any provision of an act or regulation administered by such board. Such action may be brought in summary manner pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal court where the offense occurred. Process in such action may be by summons or warrant and in the event that the defendant in such action fails to answer such action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring such person before the court to satisfy the civil penalties imposed. In any action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice.

c. Any action alleging the unlicensed practice of a profession or occupation shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court.

d. In any action brought pursuant to this act, a board or the court may order the payment of costs for the use of the State, including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs.

4. R.S.45:5-9 is amended to read as follows:

Biennial certificate of registration for licensed podiatrist; reinstatement procedure.

45:5-9. a. Every licensed podiatrist shall procure every two years from the executive director of the board, on or before November 1, a biennial certificate of registration, which shall be issued by the executive director upon payment of a fee to be determined by the board. The executive director shall mail to each licensed podiatrist on or before October 1 every two years a printed blank form to be properly filled in and returned to the executive director by such licensed person on or before the succeeding November 1, together with such fee. Upon the receipt of said form properly filled in, and such fee, the biennial certificate of registration shall be issued and transmitted. Every licensed podiatrist who continues the practice of podiatry after having failed to secure a biennial certificate of registration at the time and in the manner required by this section shall be subject to a penalty of \$25.00 for each failure. Immediately after November 1, the executive director shall send by registered mail to every podiatrist who has failed to obtain a biennial registration certificate for the ensuing two-year period a notice that their license will be automatically suspended within 30 days unless the penalty and registration fee is paid immediately. Upon failure to register after such notice, the license of such person shall be

automatically suspended and shall not be reinstated except upon full payment of penalty and registration fee. However, such suspension shall not apply to anyone who has ceased to practice in this State. Any person whose license shall have been automatically suspended under this section shall during such period of suspension be regarded as an unlicensed person, and if he continue to engage in the practice of podiatry during such period, he shall be liable to the penalties prescribed by R.S.45:5-11.

b. If an applicant for reinstatement of licensure has not engaged in practice in any jurisdiction for a period of more than five years, or the board's review of the reinstatement application establishes a basis for concluding that there may be clinical deficiencies in need of remediation, before reinstatement the board may require the applicant to submit to, and successfully pass, an examination or an assessment of skills. If that examination or assessment identifies clinical deficiencies or educational needs, the board may require the licensee, as a condition of reinstatement of licensure, to take and successfully complete any educational training, or to submit to any supervision, monitoring or limitations, as the board determines are necessary to assure that the licensee practices with reasonable skill and safety.

5. Section 1 of P.L.1971, c.236 (C.45:9-6.1) is amended to read as follows:

C.45:9-6.1 Biennial registration for practitioners of medicine and surgery; reinstatement procedure.

1. All persons who are licensed to practice medicine and surgery shall be required on or before July 1 biennially to register on the form prescribed by the board and furnished by the executive director of the board, and to pay a biennial registration fee to be determined by the board.

The license of any licensee who fails to procure any biennial certificate of registration, shall be automatically suspended on July 1. It shall be the duty of the executive director of the board on June 1 of each year to send a written notice to each licensee whose license is expiring that year, whether a resident or not, at his last address on file with the board, that his biennial registration fee is due on or before July 1 and that his license to practice in this State will be suspended if he does not procure said certificate by July 1 of that year.

Any licensee whose license has been suspended under this section may be reinstated by the payment of all past due annual registration fees and in addition thereto a fee to be determined by the board to cover cost of reinstatement.

Any person who desires to retire from the practice of medicine and surgery, and during retirement to refrain from practicing under the terms of his license, upon application to the executive director of the board, may be registered biennially, without the payment of any registration fee, as a retired physician. The certificate of registration which shall be issued to a retired physician shall state, among other things, that the holder has been licensed to practice in New Jersey, but that during his retirement he shall not so practice. The holder of a certificate of registration as a retired licensee shall be entitled to resume practice at any time; provided, he first shall have obtained from the executive director a biennial certificate of registration as hereinbefore provided.

If an applicant for reinstatement of licensure has not engaged in practice in any jurisdiction for a period of more than five years, or the board's review of the reinstatement application establishes a basis for concluding that there may be clinical deficiencies in need of remediation, before reinstatement the board may require the applicant to submit to, and successfully pass, an examination or an assessment of skills. If that examination or assessment identifies clinical deficiencies or educational needs, the board may require the licensee, as a condition of reinstatement of licensure, to take and successfully complete any educational training, or to submit to any supervision, monitoring or limitations, as the board determines are necessary to assure that the licensee practices with reasonable skill and safety.

The license to practice medicine and surgery of any person who fails to procure any biennial certificate of registration, or in lieu thereof a biennial certificate of registration as a retired licensee, at the time and in the manner required by this act shall be automatically suspended. Any person whose license shall have been automatically suspended shall, during the period of such suspension, be regarded as an unlicensed person and, in case he shall continue or engage in practice under the terms of his license during such period, shall be liable to the penalties prescribed by R.S.45:9-22. Any person to whom a certificate of registration as a retired licensee shall have been issued who shall continue or engage in practice under the terms of his license without first having obtained a certificate of registration authorizing him to resume such practice, shall be liable to the penalties prescribed by R.S.45:9-22 for practicing without a license.

It shall be the duty of each such licensee holding a certificate to practice medicine and surgery in this State, whether a resident or not, to notify the executive director of the board in writing of any change in his office address or his employment within ten days after such change shall have taken place.

This section shall not be construed so as to render inoperative the provisions of R.S.45:9-17.

6. R.S.45:9-8 is amended to read as follows:

Additional requirements for licensure to practice medicine and surgery.

45:9-8. Except as otherwise provided in R.S.45:9-1 et seq., every applicant for admission to licensure by examination to practice medicine and surgery shall, in addition to the requirements set forth in R.S.45:9-1 et seq.:

a. (1) Prove to the board that the applicant has received (a) a diploma from some legally incorporated professional school or college of the United States, Canada or other foreign country, which school or college, in the opinion of the board, was in good standing at the time of the issuance of the diploma, or (b) a license conferring the full right to practice all of the branches of medicine and surgery in some foreign country; and

(2) Shall further prove that, prior to the receipt of such diploma or license, as aforesaid, the applicant had studied not less than 4 full school years, including four satisfactory courses of lectures of at least eight months each, consecutively or in four different calendar years, in some legally incorporated and registered American or foreign professional school or schools, college or colleges in good standing in the opinion of the board, which courses shall have included a thorough and satisfactory course of instruction in medicine and surgery; and

b. (1) The applicant, if he has graduated from a professional school or college after July 1, 1916 and before July 1, 2003, shall further prove to the board that, after receiving such diploma or license, he has completed an internship acceptable to the board for at least one year in a hospital approved by the board, or in lieu thereof he has completed one year of post-graduate work acceptable to the board in a school or hospital approved by the board, unless required by regulation to complete additional post-graduate work; or

(2) The applicant, if he has graduated from a medical school after July 1, 2003, shall further prove to the board that, after receiving his diploma, he has completed and received academic credit for at least two years of post-graduate training in an accredited program and has signed a contract for a third year of post-graduate training in an accredited program, and that at least two years of that training are in the same field or would, when considered together, be credited toward the criteria for certification by a single specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association or another certification entity with comparable standards that is acceptable to the board.

c. If an applicant for licensure has not engaged in practice for a period of more than five years, or the board's review of the application establishes a basis for concluding that there may be clinical deficiencies in need of remediation, the board may require the applicant to submit to, and

successfully pass, an examination or an assessment of skills. If that examination or assessment identifies clinical deficiencies or educational needs, the board may require an applicant, as a condition of licensure, to take and successfully complete any educational training, or to submit to any supervision, monitoring or limitations, as the board determines are necessary to assure that the applicant will practice with reasonable skill and safety.

7. Section 6 of P.L.1989, c.300 (C.45:9-19.6) is amended to read as follows:

C.45:9-19.6 Medical director, educational director; requirements, duties.

6. The State Board of Medical Examiners shall employ a full-time medical director and a full-time educational director to assist the board in carrying out its duties pursuant to Title 45 of the Revised Statutes.

a. The medical director shall be a physician who is licensed to practice medicine and surgery in the State and who is knowledgeable about, or has clinical experience in, the field of chemical dependency or addiction-oriented psychiatry. The medical director shall receive such compensation as the board shall determine and shall serve at the pleasure of the board.

The duties of the medical director shall include, but are not limited to: reviewing complaints and reports of medical malpractice, impairment, incompetence or unprofessional conduct that are made to the board or the Medical Practitioner Review Panel established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8), by other health care providers and by the public; coordinating and assisting in the investigation of these complaints and reports; and assisting the panel in making its recommendations and the board in making disciplinary determinations regarding a licensee. The medical director shall perform such other duties as the board may require in carrying out its responsibilities under Title 45 of the Revised Statutes.

The medical director also shall serve as the board's liaison to any licensed health care practitioner treatment program recognized by the board. The board, in conjunction with the medical director, shall establish standards for treatment and procedures for monitoring the progress of a participating practitioner's treatment and for notifying the board when a practitioner fails to comply with the requirements of the treatment program or when a practitioner's impairment may jeopardize or improperly risk the health, safety or life of a patient.

b. The educational director shall be an educator, experienced in the field of medical education. The educational director shall receive such compensation as the board shall determine and shall serve at the pleasure of the board.

The duties of the educational director shall include, but are not limited to, facilitating the educational directives, goals and programs of the board. The educational director shall perform other duties as required by the board to carry out its responsibilities under chapter 9 of Title 45 of the Revised Statutes.

The educational director shall serve as the board's liaison to any focused education program recognized by the board. The board, in conjunction with the educational director, shall establish standards for continuing medical education programs and focused education programs as defined in subsection i. of section 9 of P.L.1989, c.300 (C.45:9-19.9), and procedures for notification of the board when a practitioner fails to comply with a monitoring program devised by a focused education program.

The board and the Division of Consumer Affairs in the Department of Law and Public Safety shall provide such investigative, medical consulting, administrative and clerical support as is necessary to assist the medical director and educational director in carrying out their duties.

8. Section 9 of P.L.1989, c.300 (C.45:9-19.9) is amended to read as follows:

C.45:9-19.9 Notice received by review panel; actions, recommendations.

9. a. The review panel shall receive:

(1) Notice from a health care facility or health maintenance organization, pursuant to section 1 of P.L.1983, c.247 (C.26:2H-12.2);

(2) Notice from an insurer or insurance association or a practitioner, pursuant to section 2 of P.L.1983, c.247 (C.17:30D-17), regarding a medical malpractice claim settlement, judgment or arbitration award or a termination or denial of, or surcharge on, the medical malpractice liability insurance coverage of a practitioner; and

b. The review panel may receive referrals from the board which may include complaints alleging professional misconduct, incompetence, negligence or impairment of a practitioner from other health care providers and consumers of health care.

c. Upon receipt of a notice or complaint pursuant to this section, the review panel shall promptly investigate the information received and obtain any additional information that may be necessary in order to make a recommendation to the board. The review panel may seek the assistance of a consultant or other knowledgeable person, as necessary, in making its recommendation. The review panel may request the board or the Attorney General to exercise investigative powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the conduct of its investigation.

(1) If the review panel has reasonable cause to believe that a practitioner represents an imminent danger to his patients, the review panel shall immediately notify the State Board of Medical Examiners and the Attorney General and recommend the initiation of an application before the board to temporarily suspend or otherwise limit the practitioner's license pending further proceedings by the review panel or the board.

If the board temporarily suspends or otherwise limits the license, the board shall notify each licensed health care facility and health maintenance organization with which the practitioner is affiliated and every practitioner in the State with which the practitioner is directly associated in his private practice.

(2) A practitioner who is the subject of an investigation shall be promptly notified of the investigation, pursuant to procedures adopted by regulation of the board that give consideration to the health, safety and welfare of the practitioner's patients and to the necessity for a confidential or covert investigation by the review panel. At the panel's request or upon a good cause showing by the practitioner an informal hearing shall be scheduled before the review panel or a subcommittee of at least three review panel members, in accordance with regulations adopted by the board. The hearing shall be transcribed and the practitioner shall be entitled to a copy of the transcript, at his own expense. A practitioner who presents information to the review panel is entitled to be represented by counsel.

(3) Notwithstanding any provision of this section to the contrary, in any case in which the board determines to conduct an investigation of a practitioner who it has reasonable cause to believe represents an imminent danger to his patients, the board may direct the review panel to provide the board with its files pertaining to that practitioner and may direct the review panel to promptly terminate its investigation of that practitioner without making a recommendation pursuant to subsection d. of this section.

Upon request of the review panel, the State Board of Medical Examiners shall provide the review panel with any information contained in the board's files concerning a practitioner.

d. Upon completion of its review, the review panel shall prepare a report recommending one of the following dispositions:

(1) Recommend to the State Board of Medical Examiners that the matter be referred to the Attorney General for the initiation of disciplinary action against the practitioner who is the subject of the notice or complaint, pursuant to section 8 or 9 of P.L.1978, c.73 (C.45:1-21 or 45:1-22);

(2) Defer making a recommendation to the board pending the outcome of litigation or a health care facility or health maintenance organization disciplinary proceeding, if there is no evidence that the practitioner's

professional conduct may jeopardize or improperly risk the health, safety or life of a patient;

(3) Refer the practitioner to the appropriate licensed health care practitioner treatment program recognized by the State Board of Medical Examiners and promptly notify the medical director of the board of the referral;

(4) Refer the practitioner to the appropriate focused education program recognized by the State Board of Medical Examiners and promptly notify the educational director of the board of the referral; or

(5) Find that no further action is warranted at this time.

e. A member of the State Board of Medical Examiners shall not participate by voting or any other action in any matter before the board on which the board member has participated previously as a review panel member.

f. The State Board of Medical Examiners may affirm, reject or modify any disposition of the review panel. After its consideration of the panel recommendation the board shall notify the practitioner who has been the subject of a notice or complaint of the review panel's recommendation and the board's determination.

g. Nothing in this section shall be construed to prevent or limit the State Board of Medical Examiners, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the Attorney General from taking any other action permitted by law against a practitioner who is the subject of an investigation by the review panel.

h. For the purposes of this section, "practitioner" means a person licensed to practice: medicine and surgery under chapter 9 of Title 45 of the Revised Statutes or a medical resident or intern; or podiatry under chapter 5 of Title 45 of the Revised Statutes.

i. As used in this section, "focused education program" means an individualized and systematic process to assess the educational needs of a licensee based on scientific analysis, technical skill and interpersonal evaluation as they relate to the licensee's professional practice, and the institution of remedial education and any supervision, monitoring or limitations of the licensee.

9. Section 12 of P.L.1989, c.300 (C.45:9-19.12) is amended to read as follows:

C.45:9-19.12 Issuance of permits, registration to practitioners in training.

12. The State Board of Medical Examiners shall, by regulation, provide for the issuance of permits to, or registration of, persons engaging in the

practice of medicine or surgery or podiatry while in training, and establish the scope of permissible practice by these persons within the context of an accredited graduate medical education program conducted at a hospital licensed by the Department of Health and Senior Services. A permit holder shall be permitted to engage in practice outside the context of a graduate medical education program for additional remuneration only if that practice is:

- a. Approved by the director of the graduate medical education program in which the permit holder is participating; and
- b. With respect to any practice at or through a health care facility licensed by the Department of Health and Senior Services, supervised by a plenary licensee who shall either remain on the premises of the health care facility or be available through electronic communications; or
- c. With respect to any practice outside of a health care facility licensed by the Department of Health and Senior Services, supervised by a plenary licensee who shall remain on the premises.

C.45:9-7.1 Continuing medical education required as condition for biennial registration.

10. a. The State Board of Medical Examiners shall require each person licensed as a physician, as a condition for biennial registration pursuant to section 1 of P.L.1971, c.236 (C.45:9-6.1), or as a podiatrist, as a condition for biennial registration pursuant to R.S.45:5-9, to complete 100 credits of continuing medical education, all of which shall be in Category I or Category II as defined in subsection i. of this section.

b. The board shall:

- (1) Establish standards for continuing medical education, including the subject matter and content of courses of study;
- (2) Accredit education programs offering credit toward continuing medical education requirements or recognize national or State organizations that may accredit education programs;
- (3) Allow satisfaction of continuing medical education requirements through equivalent educational programs, such as participation in accredited graduate medical education programs, examinations, papers, publications, scientific presentations, teaching and research appointments and scientific exhibits, and establish procedures for the issuance of credit upon satisfactory proof of attainment of these equivalent educational programs;
- (4) Create an advisory committee to be comprised of at least five members, including representatives of the Medical Society of New Jersey, the Academy of Medicine of New Jersey, the New Jersey Osteopathic Association, the New Jersey Podiatric Medical Association and such other professional societies and associations as the board may identify, to provide

guidance to the board in discharging its responsibilities pursuant to this section; and

(5) Delineate, through the promulgation of regulations, any specific courses or topics which, on the recommendation of the advisory committee created pursuant to paragraph (4) of this subsection and in the discretion of the board, are to be required.

c. Each hour of an educational course or program shall be equivalent to one credit of continuing medical education.

d. The board may, in its discretion, waive requirements for continuing medical education on an individual basis for reasons of hardship such as illness or disability, retirement of license, or other good cause. A waiver shall apply only to the current biennial renewal period at the time of board issuance.

e. The board shall not require completion of continuing medical education credits for any registration period commencing within 12 months of the effective date of this section.

f. The board shall require completion of medical education credits on a pro-rated basis for any registration period commencing more than 12 months but less than 24 months from the effective date of this section.

g. The board shall require new licensees to successfully complete, within 24 months of becoming licensed, an orientation course, in those topics identified by the board through regulation, conducted by an organization recognized by the board.

h. The board shall not require a new licensee to complete required continuing medical education credits, other than the orientation course described in subsection g. of this section, for any registration period commencing within 12 months of the licensee's participation in and completion of an accredited graduate medical education program.

i. As used in this section, "Category I and Category II" means those categories of medical education courses recognized by the American Medical Association, the American Osteopathic Association, the American Podiatric Medical Association, the Accreditation Council for Continuing Medical Education or other comparable organizations recognized by the board.

11. Sections 1 through 9 of this act shall take effect immediately and section 10 shall take effect on the 180th day after the date of enactment.

Approved January 3, 2002.

CHAPTER 308

AN ACT concerning time limitations on certain prosecutions and amending N.J.S.2C:1-6.

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

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

Time limitations.

2C:1-6. Time Limitations. a. A prosecution for any offense set forth in N.J.S.2C:11-3, N.J.S.2C:11-4 or N.J.S.2C:14-2 may be commenced at any time.

b. Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitations:

(1) A prosecution for a crime must be commenced within five years after it is committed;

(2) A prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed;

(3) A prosecution for any offense set forth in N.J.S.2C:27-2, N.J.S.2C:27-4, N.J.S.2C:27-6, N.J.S.2C:27-7, N.J.S.2C:29-4, N.J.S.2C:30-2, N.J.S.2C:30-3, or any attempt or conspiracy to commit such an offense, must be commenced within seven years after the commission of the offense;

(4) A prosecution for an offense set forth in N.J.S.2C:14-3 or N.J.S.2C:24-4, when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim's attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later;

(5) A prosecution for any offense set forth in paragraph (2) of subsection a. of N.J.S.2C:17-2, section 9 of P.L.1970, c.39 (C.13:1E-9), section 20 of P.L.1989, c.34 (C.13:1E-48.20), section 19 of P.L.1954, c.212 (C.26:2C-19), section 10 of P.L.1984, c.173 (C.34:5A-41), or section 10 of P.L.1977, c.74 (C.58:10A-10) must be commenced within 10 years after the date of discovery of the offense by a local law enforcement agency, a county prosecutor, or the Department of Environmental Protection either directly by any of those entities or indirectly by notice given to any of those entities.

c. An offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is

committed, except that when the prosecution is supported by physical evidence that identifies the actor by means of DNA testing or fingerprint analysis, time does not start to run until the State is in possession of both the physical evidence and the DNA or fingerprint evidence necessary to establish the identification of the actor by means of comparison to the physical evidence.

d. A prosecution is commenced for a crime when an indictment is found and for a nonindictable offense when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay. Nothing contained in this section, however, shall be deemed to prohibit the downgrading of an offense at any time if the prosecution of the greater offense was commenced within the statute of limitations applicable to the greater offense.

e. The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this State.

f. The limitations in this section shall not apply to any person fleeing from justice.

g. Except as otherwise provided in this code, no civil action shall be brought pursuant to this code more than five years after such action accrues.

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 309

AN ACT concerning paid leave for members of certain law enforcement and firefighter associations who attend conventions and amending N.J.S.11A:6-10 and P.L.1977, c.347.

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

1. N.J.S.11A:6-10 is amended to read as follows:

Leaves of absence for convention attendance.

11A:6-10. A leave of absence with pay shall be given to employees who are duly authorized representatives of an employee organization defined as a "representative" in subsection e. of section 3 of P.L.1941, c.100 (C.34:13A-3) and affiliated with the New Jersey Policemen's Benevolent

Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc. or the Professional Fire Fighters Association of New Jersey to attend any State or national convention of the organization, provided, however, that no more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave, and for employee organizations with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave. The leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention, provided that such leave shall be for no more than seven days. A certificate of attendance at the convention shall, upon request, be submitted by the representative so attending.

2. Section 1 of P.L.1977, c.347 (C.40A:14-177) is amended to read as follows:

C.40A:14-177 Attendance at State, national convention of certain organizations.

1. The heads of the county offices of the several counties and the head of every department, bureau and office in the government of the various municipalities shall give a leave of absence with pay to persons in the service of the county or municipality who are duly authorized representatives of an employee organization as defined in subsection e. of section 3 of P.L.1941, c.100 (C.34:13A-3) and affiliated with the New Jersey State Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc. or Professional Fire Fighters Association of New Jersey to attend any State or national convention of such organization, provided, however, that no more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave, and for employee organizations with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave.

A certificate of attendance to the State convention shall, upon request, be submitted by the representative so attending.

Leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for time to travel to and from the convention, provided that such leave shall be for no more than seven days.

3. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 310

AN ACT expanding the mechanisms available to finance local development projects, supplementing chapter 12A of Title 40A of the New Jersey Statutes and chapter 27D of Title 52 of the Revised Statutes, and amending P.L.1992, c.79.

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

C.40A:12A-64 Short title.

1. Sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.) shall be known and may be cited as the "Redevelopment Area Bond Financing Law."

C.40A:12A-65 Definitions relative to "Redevelopment Area Bond Financing Law."

2. As used in sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.):

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), the New Jersey Redevelopment Authority established pursuant to section 4 of P.L.1996, c.62 (C.55:19-23) or other instrumentality created by law by the State with the power to incur debt and issue bonds and other obligations.

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

"Bonds" mean bonds, notes or other obligations issued by the authority or a municipality to finance or refinance redevelopment projects pursuant to the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), the "Local Redevelopment and Housing Law", P.L.1992, c.79 (C.40A:12A-1 et seq.), or other applicable law.

"Financial agreement" means an agreement that meets the requirements of a financial agreement under P.L.1991, c.431 (C.40A:20-1 et seq.).

"Municipality" means the municipal governing body or an entity acting on behalf of the municipality if permitted by the federal Internal Revenue Code of 1986, or, if a redevelopment agency or redevelopment entity is established in the municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so provides, the redevelopment agency or entity so established.

"Redeveloper" means any person, firm, corporation or public body, including the New Jersey Economic Development Authority or the New Jersey Redevelopment Authority to the extent permitted by law, that shall enter into or propose to enter into a contract with a municipality or other

redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication 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, and any other related costs and expenses including preliminary planning and development costs and any financing costs and expenses in accordance with a redevelopment plan.

"Redevelopment bond financing agreement" means a contract between a municipality and a redeveloper for any work or undertaking for the redevelopment of a redevelopment area, or part thereof, under the provisions of the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.) or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), as the case may be.

"Redevelopment area" means an area which has been delineated a "redevelopment area" or "area in need of redevelopment" pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.).

"Redevelopment project" means any work or undertaking pursuant to a redevelopment plan; such undertaking 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 and any other related costs and expenses including preliminary planning and development costs and any financing costs and expenses.

"Special assessment" means an assessment upon the lands or improvements on such lands, or both, in the redevelopment area benefitted by improvements undertaken pursuant to the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and assessed pursuant to chapter 56 of Title 40 of

the Revised Statutes, R.S. 40:56-1 et seq., except as otherwise provided in subsection b. of section 3 of P.L.2001, c.310 (C.40A:12A-66).

C.40A:12A-66 Tax abatement within redevelopment area; special assessments.

3. a. A municipality that has designated a redevelopment area may provide for tax abatement within that redevelopment area and for payments in lieu of taxes in accordance with the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) and P.L.1991, c.441 (C.40A:21-1 et seq.); provided, however, that the provisions of section 12 of P.L.1991, c.431 (C.40A:20-12) establishing a minimum or maximum annual service charge and requiring staged increases in annual service charges over the term of the exemption period, and of section 13 of P.L.1991, c.431 (C.40A:20-13) permitting the relinquishment of status under that act, shall not apply to redevelopment projects financed with bonds.

b. In addition to, or in lieu of, the tax abatement provided for in subsection a. of this section, the municipality may provide by ordinance for one or more special assessments within the redevelopment area in accordance with chapter 56 of Title 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however, that the provisions of R.S.40:56-35 shall be applied so that if any installment of a special assessment shall remain unpaid for 30 days after the time at which it shall become due, the municipality may provide, by ordinance, either that: (1) the whole assessment or balance due thereon shall become and be immediately due; or, (2) any subsequent installments which would not yet have become due except for the default shall be considered as not in default and that the lien for the installments not yet due shall continue; and provided, further, that the ordinance may require that the assessments be payable in quarterly, semi-annual or yearly installments, with legal interest thereon, over a period of years up to but in no event exceeding the period of years for which the bonds were issued, or for 30 years, whichever shall be less. In levying a special assessment on the lands or improvements, or both, located in the redevelopment area, the municipality may provide that the amount of the special assessment shall be a specific amount, not to exceed the cost of the improvements, paid with respect to property located in the redevelopment area. That specific amount shall, to the extent accepted by the owner of the property benefitted, be deemed the conferred benefit, in lieu of the amount being determined by the procedures otherwise applicable to determining the actual benefit conferred on the property. Special assessments levied pursuant to an ordinance adopted under this subsection shall constitute a municipal lien upon confirmation by the municipal governing body or by the court, under R.S.40:56-33, except that such amount shall constitute a municipal lien

effective upon the date accepted in writing by the owner of the property benefitted if prior to the actual confirmation.

c. Upon adoption, a copy of the ordinance shall be filed for public inspection in the office of the municipal clerk, and there shall be published in a newspaper, published or circulating in the municipality, a notice stating the fact and the date of adoption and the place where the ordinance is filed and a summary of the contents of the ordinance. The notice shall state that any action or proceeding of any kind or nature in any court questioning the validity or proper authorization of the ordinance or the actions authorized to be taken as set forth in the ordinance shall be commenced within 20 days after the publication of the notice. If no action or proceeding questioning the validity of the ordinance providing for tax abatement, special assessments or other actions authorized by the ordinance shall be commenced or instituted within 20 days after the publication of the notice, the county and the school district and all other municipalities within the county and all residents and taxpayers and owners of property therein shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court questioning the validity or enforceability of the ordinance or the validity or enforceability of acts authorized under the ordinance, and the ordinance and acts authorized by the ordinance shall be conclusively deemed to be valid and enforceable in accordance with their terms and tenor.

C.40A:12A-67 Issuance of bonds by municipality.

4. a. The municipality may issue bonds itself in the manner provided for herein or pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or may apply to the authority to issue bonds, which in either case may be secured by payments in lieu of taxes or special assessments or both by the adoption of a resolution of the governing body to that effect.

b. A municipality that has designated a redevelopment area may, by resolution of its governing body, if it determines to issue bonds through the authority, enter into contracts with the authority relating to any project or projects for the purpose of financing or refinancing redevelopment, or act as a redeveloper, within a redevelopment area. A resolution so adopted shall contain findings and determinations of the governing body: (1) that the project will result in the redevelopment of the municipality; and, (2) that the contract with the authority is a necessary or important inducement to the undertaking of the project in that the contract makes the financing thereof feasible. The contract or contracts, or the terms of any bonds issued directly by a municipality may provide for the assignment, for the benefit of bondholders, of all or any portion of payments in lieu of taxes, or special

assessments, or both. A contract may be made and entered into for a term beginning currently or at some future or contingent date, and with or without consideration, and for a specified or unlimited time, and on any terms and conditions which may be requested by the municipality and, if applicable, as may be agreed to by the authority in conformity with its contracts with the holders of bonds, and shall be valid and binding on the municipality. The municipality is hereby authorized and directed to do and perform any contract so entered into by it and to provide for the discharge of any obligation thereunder in the same manner as other obligations of the municipality.

Any contract, and any instrument making or evidencing the same, may be pledged or assigned by the authority, with the consent of the municipality executing the contract, to secure its bonds and thereafter may not be modified except as provided by the terms of the instrument or by the terms of the pledge or assignment.

The municipality may include in the terms of a bond or contract a provision that the payments in lieu of taxes or special assessments shall constitute a municipal charge for the purposes of R.S.54:4-66.

c. The payments in lieu of taxes or special assessments, or both, may be assigned directly by the municipality or the authority or the trustee for the bonds as payment or security for the bonds. Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all the municipality's right, title, and interest in the payment in lieu of taxes or special assessments, or both, or portion thereof, along with the rights and remedies provided to the municipality under the agreement including, but not limited to, the right of collection of payments due. Payments in lieu of taxes and special assessments assigned as provided hereunder shall not be included in the general funds of the municipality, nor shall they be subject to any laws regarding the receipt, deposit, investment or appropriation of public funds and shall retain such status notwithstanding enforcement of the payment or assessment by the municipality or assignee as provided herein. The municipality shall be a "person" within the meaning of that term as defined in section 3 of P.L.1974, c.80 (C.34:1B-3); and the purpose described in this section shall be a "project" within the meaning of that term as defined in section 3 of P.L.1974, c.80 (C.34:1B-3).

d. Notwithstanding the provisions of subsection g. of section 37 of P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this section may be issued as non-recourse obligations, and unless otherwise provided for by a separate action of the municipality to guarantee such bonds or otherwise provide for a pledge of the municipality's full faith and credit shall not, except for such action, be considered to be direct and general obligations of the municipality, and, absent such action, the municipality

shall not be obligated to levy and collect a tax sufficient in an amount to pay the principal and interest on the bonds when the same become due and payable. The provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds issued or authorized pursuant to this section and those bonds shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of chapter 27 of Title 52 of the Revised Statutes shall not apply to such bonds.

e. The proceeds from the sale of bonds and any funds provided by any department of the State, authority created by the State or bi-state authority for the purposes described in the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), shall not require compliance with public bidding laws, including the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other statute where the redeveloper shall undertake the redevelopment project. The use of these funds shall be subject to public accountability and oversight by the municipality or agency providing the funds.

f. In order to provide additional security for any loan to a redeveloper or to bonds issued to finance a redevelopment project, the municipality may utilize powers otherwise provided by law, including the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), to provide for any extension of the municipality's credit to any redeveloper or its full faith and credit which may include a full faith and credit lease as security for the bonds or any loan to a redeveloper. To the extent that the municipality provides for a full faith and credit guarantee of any loan to a redeveloper or any bonds, but determines not to authorize the issuance of bonds or notes to provide for the funding source thereof, or otherwise determines to enter into a full faith and credit lease, it may do so by resolution approved by a majority of the full governing body. To the extent that bonds or notes are authorized as provided above, such bonds or notes shall be authorized pursuant to the provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall be deductible from the gross debt of the municipality until such time as such bonds or notes are actually issued, and only up to the amount actually issued, to fund such guarantee.

g. A financial instrument, whether issued by a municipality or an authority, that is secured in whole or in part by payments in lieu of taxes or by special assessments, or both, as provided herein shall be subject to the review and approval of the board. That review and approval shall be made prior to approval of, in the case of a municipality, an ordinance or, in the case of an authority, a resolution. The board shall be entitled to receive from the applicant an amount sufficient to provide for all reasonable

professional and other fees and expenses incurred by it for the review, analysis and determination with respect thereto. As part of its review, the board shall specifically solicit comments from the Office of State Planning and the New Jersey Economic Development Authority in addition to comments from the public. As part of the board's review and approval, it shall consider where appropriate one or more of the following: whether the redevelopment project or plan promotes approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life of our citizens.

C.40A:12A-68 Payments in lieu of taxes constitute municipal lien.

5. a. Payments required to be made in accordance with an agreement for payments in lieu of taxes entered into under section 3 of P.L.2001, c.310 (C.40A:12A-66) shall be a continuous lien on the land against which the ordinance is recorded on and after the date of recordation of both the ordinance and the agreement, whether simultaneously or not, or the date of confirmation of the special assessments, whichever is earlier. All subsequent payments in lieu of taxes thereunder, interest, penalties and costs of collection which thereafter fall due or accrue shall be added and relate back to and be a part of the initial lien. Upon recordation of the ordinance and agreement, payments in lieu of taxes shall constitute a municipal lien within the meaning, and for all purposes, of law.

b. If bonds are issued, the municipality or the redeveloper may record, either simultaneously or at different times, any ordinance enacted by the municipality relating to the payment in lieu of taxes agreement or special assessments and, either simultaneously with the ordinance or at different times, a copy of the agreement or agreements. The ordinance, when recorded, shall contain a legend at the top of the front page substantially as follows:

"THIS ORDINANCE SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE 'REDEVELOPMENT AREA BOND FINANCING LAW' AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED."

c. Notwithstanding any law to the contrary, upon recordation of both the ordinance and any accompanying agreement, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall thereafter be superior to all non-municipal liens thereafter recorded or otherwise arising, without any additional notice, recording, filing, continuation filing or action, until the payment in full of the bonds. The lien thereby established shall apply not only to the bonds initially issued, but also to any

refinancing or refunding thereof, as well as to any additional bonds thereafter issued on a parity therewith in accordance with the provisions of the original documents securing the initial bonds; provided, however, that in the event any ordinance or agreement is amended or supplemented in a way which increases the amount of payment in lieu of taxes or special assessments, the lien as to that increase shall be perfected and apply upon the recordation of the amended or supplemented ordinance and agreement (including the above-recited legend). Except as set forth in this section, no amendment or supplement to the ordinance or agreement thereafter recorded shall affect the perfection or priority of the lien established upon original recordation thereof.

d. Upon the final payment in full of any bonds secured as provided in this section and section 4 of P.L.2001, c.310 (C.40A:12A-67) , the lien established hereby shall terminate, and the municipality shall record a notice to that effect.

C.40A:12A-69 Payment secured by mortgage.

6. In lieu of, or in addition to, the provisions of section 5 of P.L.2001, c.310 (C.40A:12A-68), the municipality may provide in the agreement that the payment in lieu of taxes, if any, is to be secured by a mortgage. In that event the mortgage may also be assigned and pledged to the repayment of the bonds authorized herein.

The assignment of any mortgage that secures a payment in lieu of taxes, if any, may also be an absolute assignment of all or part of the municipality's right, title, and interest in the mortgage and, to the extent assigned, any moneys realized from the foreclosure of the mortgaged property shall not be included in the general funds of the municipality.

After the bonds are paid and no longer deemed to be outstanding, the assignment of the mortgage shall terminate.

C.40A:12A-70 Bonds exempt from taxation.

7. All bonds issued pursuant to the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) are hereby declared to be issued by a political subdivision of this State and for an essential public and governmental purpose and the bonds, and the interest thereon and the income therefrom, and all facility charges, funds, revenues and other moneys pledged or available to pay or secure the payment of the bonds, or interest thereon, shall at all times be exempt from taxation except for transfer inheritance and estate taxes.

C.40A:12A-71 Covenant, agreement with bondholders.

8. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds issued pursuant to the "Redevelopment

Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) that the State will not limit or alter the terms of any agreement, ordinance or resolution made in connection with the security for and the issuance and sale of any bonds, so as to in any way impair the rights or remedies of such holders, and will not modify in any way the exemption from taxation provided for in the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.), until the bonds, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged or provided for.

C.40A:12A-72 Severability.

9. If any section, subsection, clause or provision of the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) shall be adjudged to be unconstitutional or ineffective in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective, it shall be valid and effective and no other section, subsection, clause or provision of the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) shall on account thereof be deemed invalid or ineffective, and the inapplicability or invalidity of any section, subsection, clause or provision of the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) in any one or more instances or under any one or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstance.

C.40A:12A-73 Bonds presumed authorized.

10. After issuance, pursuant to the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) all bonds shall be conclusively presumed to be fully authorized and issued by all courts and officers of this State, and any person shall be estopped from questioning their sale, execution or delivery.

C.52:27D-459 Short title.

11. Sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.) shall be known and may be cited as the "Revenue Allocation District Financing Act."

C.52:27D-460 Findings, declaration relative to "Revenue Allocation District Financing Act."

12. The Legislature finds and declares that:

a. There are areas within certain municipalities in this State that deter private capital investment because of the deteriorating condition of the land, buildings and infrastructure within those areas, or that have not experienced

private capital investment due to inadequate infrastructure or adverse economic conditions.

b. These areas also create an economic burden for the municipality due to the limited tax base and underutilization of resources.

c. The scarcity of resources available to municipalities for redevelopment has severely hampered these municipalities' ability to rehabilitate these areas.

d. In order to redevelop these areas in a beneficial manner, municipalities should be provided the means to finance certain costs of redevelopment so as to open new avenues for private investment; stimulate commercial, industrial, recreational, cultural, entertainment, civic and educational enterprise; and create favorable conditions for increases in economic activity, property values, employment opportunities and the provision of affordable housing.

e. The use of new redevelopment tools as a catalyst for economic revitalization can be maximized if employed in conjunction with the redevelopment planning process established pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.).

f. The State should consider, where appropriate, one or more of the following: whether the redevelopment project or plan promotes approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life of our citizens.

g. It is, therefore, in the public interest to authorize the use of revenue allocation financing by municipalities and the dedication of payments in lieu of taxes toward the retirement of debt incurred in redevelopment, as set forth hereunder, to encourage private investment within areas that are blighted or in need of redevelopment or would otherwise remain unused.

C.52:27D-461 Definitions relative to "Revenue Allocation District Financing Act."

13. As used in sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.):

"Area in need of redevelopment" means a redevelopment area as defined pursuant to section 3 of P.L.1992, c.79 (C.40A:12A-3).

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

"Bonds" means the bonds, notes and bond anticipation notes issued to finance projects pursuant to the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

"District" means the area or areas within a municipality designated as a revenue allocation district pursuant to the provisions of the "Revenue

Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

"District agent" means that entity designated by the municipal governing body pursuant to section 14 of P.L.2001, c.310 (C.52:27D-462) to administer a revenue allocation plan on behalf of the municipality.

"Eligible revenue" means the property tax increment and any other incremental revenues set forth in section 21 of P.L.2001, c.310 (C.52:27D-469).

"Municipality" means the municipal governing body or an entity acting on behalf of the municipality if permitted by the federal Internal Revenue Code of 1986 or, if a redevelopment agency or redevelopment entity is established in a municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so provides, the redevelopment agency or entity so established.

"Permitted investment obligations" means any securities permitted for purchase by local units of government pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1).

"Plan" means the final revenue allocation plan developed by a district agent pursuant to section 22 of P.L.2001, c.310 (C.52:27D-470) and containing, among other elements, the proposed projects, estimated cost of the projects, sources of revenue, and the terms of any obligations, undertakings or commitments to be incurred by the district agent.

"Pledged revenues" means those eligible revenues designated in the plan for payment of project costs.

"Project" means the purchasing, leasing, condemning or otherwise acquiring of land or other property, or an interest therein, in the district or as necessary or convenient for the acquisition of any right-of-way or other easement to or from the revenue allocation district; the moving and relocation of persons or businesses displaced by the acquisition of land or property; the acquisition, construction, reconstruction or rehabilitation of land or property and the improvements thereon, or the financing thereof, including demolition, clearance, removal, relocation, renovation, alteration, construction, reconstruction, alteration or repair of any land, building, street, highway, alley, utility, mass transit facility, service or other structure, infrastructure or improvement in the district or necessary to effectuate the plan for the district, including infrastructure improvements outside the district, but only those which are integral to the effectuation of the district plan; the acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, or the financing thereof; acquisition, construction, reconstruction or rehabilitation of residential structures, or the conversion to residential use of structures previously designed or used for other purposes, or the financing thereof, nonprofit

corporation or other suitable public or private person, firm, corporation or association, and which, to the extent economically feasible, shall constitute housing affordable to persons and families of low and moderate income pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or rules and regulations adopted pursuant thereto; and all costs associated with any of the foregoing, including the cost of administrative appraisals, legal, financial, economic and environmental analyses, engineering or cleanup, planning, design, architectural, surveying or other professional and technical services necessary to effectuate the purposes of the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

"Project cost" means the cost of the plan or project in all or any part of the district and of all and any property, rights, easements, privileges, agreements and franchises deemed by the district agent to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds; cost of issuance of bonds; engineering and inspection costs; legal expenses; costs of financial and other professional estimates and advice; organization, administrative, operating and other expenses of the district agent prior to and during the planning and implementation of a development, plan or project, including such provision as the district agent may determine for the payment, or security for payment, of principal of or interest on bonds during or after the implementation of any development, plan or project.

"Property tax increment" means the amount obtained by:

(1) multiplying the general tax rate levied each year by the taxable value of all the property assessed within a district in the same year, excluding any special assessments; and

(2) multiplying that product by a fraction having a numerator equal to the taxable value of all the property assessed within the district, minus the property tax increment base, and having a denominator equal to the taxable value of all property assessed within the district.

"Property tax increment base" means the aggregate taxable value of all property assessed which is located within a district as of October 1 of the year preceding the year in which the district is authorized pursuant to the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

"Redevelopment plan" means a redevelopment plan as the term is defined pursuant to section 3 of P.L.1992, c.79 (C.40A:12A-3).

"Revenue increment base" means the amount of any eligible revenues, other than the property tax increment, collected in the calendar year immediately preceding the adoption of the plan.

"Taxing entity" means the county, the school district or districts, and the municipality authorized to levy a tax on the taxable property within a municipality.

C.52:27D-462 Establishment of districts.

14. The governing body of any municipality may by ordinance establish a district or districts. In the case of a municipality whose redevelopment powers are assigned by law to a regional planning commission, the commission may, by resolution, establish a district or districts in the area within which the commission has jurisdiction.

A revenue allocation district shall consist of all lots and streets within the borders of an area within a municipality or within areas of the municipality designated in the plan. The lots and streets shall be contiguous unless the municipality determines that non-contiguous areas of the municipality should comprise one district because those areas are part of a common development project or plan. The total taxable value in all districts designated shall not exceed 15 percent of the total taxable property assessed within the municipality, as determined by the municipal assessor, except that, upon a request by the governing body, the board may approve for inclusion in the district up to 20 percent of the total taxable property assessed in the municipality, as determined by the municipal assessor. The lots and streets to be designated as part of the plan shall be designated as a revenue allocation district as part of a duly adopted redevelopment plan approved by the governing body.

The ordinance or resolution, as appropriate, shall be adopted as provided in section 17 of P.L.2001, c.310 (C.52:27D-465), and shall include or incorporate:

- a. a map designating the area or areas within the municipality as a district or districts;
- b. a certification by the municipal assessor that, upon the basis of property assessments as of October 1 of the year preceding the certification, the total taxable property value in all districts designated by the municipality, including the district being proposed in the ordinance, does not exceed 15 or 20 percent, as the case may be, of the total taxable property assessed in the municipality, as provided in the ordinance adopted in accordance with the provisions of this section;
- c. the designation of a district agent, which may be a county, a county improvement authority, the New Jersey Redevelopment Authority, the New Jersey Economic Development Authority or a municipality; provided, however, that if a district is created in an area under the jurisdiction of a regional planning commission which has been assigned redevelopment

powers pursuant to law, that commission shall serve as the district agent in connection with that district;

d. a designation of all or any percentage of any eligible revenue or revenues as pledged revenues;

e. a statement of whether or not the municipality intends that any of the bonds issued by the district agent, if other than a municipality, be guaranteed by the municipality, or be issued as qualified bonds pursuant to the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.), or both;

f. a proposed preliminary revenue allocation plan, as set forth in section 15 of the P.L.2001, c.310 (C.52:27D-463);

g. documentation that the district has been identified in the appropriate redevelopment plan; and

h. Such other conditions or limitations as shall be imposed on the district agent by the governing body.

C.52:27D-463 Proposed preliminary revenue allocation plan.

15. The proposed preliminary revenue allocation plan shall include:

a. a certification by the municipal tax assessor of the property tax increment base of the district;

b. a statement of the revenues, if any, to be pledged to support bonds of the district, the percentage of such revenues to be so pledged, and a certification by the chief financial officer of the municipality of the revenue increment base for each of the pledged revenues other than the property tax revenue base. If the amount of any such revenue base cannot be certified, then the chief financial officer shall estimate the amount and describe the basis for preparing the estimate and the manner in which the revenue increment base will be determined after adoption of the plan;

c. a description of the proposed project or projects, an estimate of their cost, a proposed construction schedule, the projected amount of bonds to be issued and whether interest on such bonds is exempt from taxation for federal income tax purposes and the projected debt service on the bonds issued to finance the project;

d. a description of the development expected or planned within the district, including the identification of the developers, if any, other than the district agent or the municipality, and their contractual relationship, if any, with the district agent or the municipality;

e. an estimate of the taxable value of the assessed property within a district upon completion of the projects;

f. a projection of the amount of the pledged revenues during the period in which any bond will be outstanding;

- g. a statement of whether or not the district agent intends to create a reserve for payment of project costs prior to the adoption of the final revenue allocation plan;
- h. a statement of whether or not tax abatements or exemptions or special assessments are expected to be granted in the district; and
- i. a fiscal impact statement for the taxing entities involved.

C.52:27D-464 Submission of ordinance as application.

16. When an ordinance establishing or amending a district has passed first reading, it shall be submitted as an application, together with all included and incorporated certificates and documents and such additional documentation as the board may by rule prescribe, to the board.

The board shall approve the ordinance if it determines that:

- a. the planned developments are likely to be realized and would not likely be accomplished by private enterprise without the creation of the district and the revenue allocation financing of the proposed project or projects;
- b. the revenue increments and any other pledged revenues will be sufficient to pay debt service on bonds issued to effectuate the plan;
- c. the credit of the municipality and its ability to pay the principal of and interest on its debts and to provide essential public services will not be impaired;
- d. the creation of the district will contribute to the economic development of the municipality;
- e. the size of the proposed district and the amount of the pledged revenues do not exceed the size and amount necessary to accomplish the purposes of the plan;
- f. any insufficiency or shortfall in the amount of the revenue or guarantees pledged to pay debt service or bonds issued to effectuate the plan would not pose inappropriate risk or undue financial hardship to the taxpayers of the community;
- g. there are no other factors which, in the determination of the board, will impair the credit of the municipality or reduce its ability to pay punctually the principal of and interest on its debts and supply other essential public improvements and services; and
- h. the planned development does one or more of the following: promote approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life of our citizens.

C.52:27D-465 Written recommendations by board.

17. a. The board may make written recommendations as to any aspect of the ordinance and the preliminary revenue allocation plan and any related

fiscal matters of the municipality which in the opinion of the board shall be changed in order to effectuate the plan. The board may condition its approval of the ordinance upon the adoption of its recommendations by the municipality.

b. The board shall approve, approve with conditions, or disapprove the ordinance within 60 days of its receipt of an application which the board has deemed to be complete. If the board does not act within 60 days the ordinance shall be deemed approved. If the board disapproves the ordinance it shall, within 30 days of signifying its disapproval, set forth its reasons in writing. The municipality may amend the ordinance and resubmit it to the board.

c. Upon receipt of the approved ordinance from the board, the municipal governing body may adopt the ordinance at a meeting of the governing body by a majority of the authorized membership thereof.

C.52:27D-466 No alteration of established district without amending ordinance.

18. After adoption of the ordinance establishing a district there shall be no expansion or contraction of the boundaries of the district, the designation of the district agent, or the designation of the pledged revenues without adoption of an amending ordinance approved by the board as provided in section 17 of P.L.2001, c.310 (C.52:27D-465).

C.52:27D-467 Property tax increment base for altered districts.

19. Whenever a district is expanded as permitted under section 18 of P.L.2001, c.310 (C.52:27D-466) the property tax increment base for any area added to the district shall be the aggregate taxable value of all property assessed which is located within the added area as of October 1 of the year preceding the year in which the area is added, as certified by the municipal assessor. The revenue increment base of all other eligible revenues shall include the amounts of all other eligible revenues from sources within the added area in the calendar year preceding the year in which the area is added, as certified by the chief financial officer of the municipality.

Whenever a district is contracted as permitted under section 18 of P.L.2001, c.310 (C.52:27D-466) the tax increment base and the increment base of all other eligible revenues of the district shall be adjusted as if that area had not been a part of the district at the time when it became part of the district.

C.52:27D-468 Powers, responsibilities of district agent.

20. The district agent shall have the following powers and responsibilities to the extent so designated by ordinance:

a. to make and enter into contracts or agreements with public agencies, nonprofit corporations or other suitable public or private persons, firms,

corporations or associations, and to make loans or grants to, or guarantee the obligations of, any other public agency or corporation, as may be necessary, convenient or incidental to the execution of the plan and the exercise of the district agent's powers under the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.);

b. to enter into agreements or other transactions with, and accept grants, loans, appropriations or other assistance or cooperation from the United States or any agency thereof, or from the State or a county or municipal governing body or any agency thereof, or any nonprofit corporation or other suitable public or private person, firm, corporation or association in furtherance of the purposes of the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.);

c. to prepare and administer the plan according to the provisions of the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.);

d. to hire or consult with private consultants when preparing the plan, or to enter into agreements with public or nonprofit private agencies to prepare and administer the plan;

e. to issue bonds or cause bonds to be issued for any purpose of the district authorized by or pursuant to the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.), or to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it, and to issue notes in anticipation of the issuance of bonds as provided in the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.);

f. to seek and receive funds from local, State and federal governments and from private sources for the purpose of implementing any authorized development or project or meeting any project cost;

g. to pay project costs, specifically including payments to a private developer, as reimbursement for project costs incurred by a private developer, in accordance with a redevelopment bond financing agreement entered into by the municipality or municipalities and the private developer; and

h. to include in the terms of any resolution, bond or contract a provision that the payments in lieu of taxes or special assessments shall constitute a municipal charge for the purposes of R.S.54:4-66.

Except as provided otherwise herein, nothing herein is intended to limit the powers granted under any other law or regulation to the entity acting as district agent under the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

C.52:27D-469 Eligible revenues.

21. The plan may include one or more of the following eligible revenues if the municipality is otherwise authorized by law to collect such revenues:

- a. incremental payments in lieu of taxes, with respect to property located in the district, made pursuant to the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.) or the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et al.);
- b. incremental revenues from payroll or wage taxes with respect to activities carried on within the district;
- c. incremental revenue from lease payments made to the municipality or district agent with respect to property located in the district;
- d. incremental revenue from payments in lieu of taxes or service charges with respect to property located within the district;
- e. incremental revenue from parking taxes derived from parking facilities located within the district;
- f. admissions and sales taxes received from the operation of a public facility which the district agent is authorized by law to retain;
- g. sales and excise taxes which are derived from activities within the district and which are rebated to or retained by the municipality pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law providing for such rebate or retention;
- h. parking revenue from public parking facilities built as part of a project except for public parking facilities owned by parking authorities pursuant to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.);
- i. assessments as allowed by law that are levied against properties in a district, if consented to by the governing body of the municipality in which the district is situated;
- j. the property tax increment.

The incremental revenue for the revenues listed in subsections b., c., d. and e. of this section shall be calculated as the difference between the amount collected in any calendar year from any eligible revenue source included in the plan, less the revenue increment base for that eligible revenue.

C.52:27D-470 Adoption of final revenue allocation plan.

22. Before pledging any revenues, issuing any bonds, incurring any obligations or guaranteeing the obligations of any other entity with respect to the project costs of any project, the district agent shall adopt a final revenue allocation plan for that project. That plan shall include:

- a. a description of the project or projects to be financed, including the projected cost and construction schedule;
- b. a description of any development to be undertaken by any developer in connection with the project, including an estimate of the eligible revenues anticipated from the development;
- c. a description of the eligible revenues to be pledged to the support of the project, or to the bonds or other obligations to be issued or incurred by the district agent;
- d. a description of other anticipated projects for the district and the anticipated means of financing those projects;
- e. a copy of any proposed bond resolution, contract, lease or other agreement to be adopted or authorized by the district agent. Any proposed bond resolution shall include a description of the security features of the bonds, including reserve funds or other security enhancements, if any, such as a municipal guarantee, qualified bond authorization, bond insurance or letter of credit; the maturity schedule for the bonds; the estimated interest rate; the period of capitalized interest, if any; an estimate of the costs of issuance, with identification of bond counsel, financial advisers, underwriters and other professionals engaged to assist in the issuance of bonds; lien priorities among projects, if any; and such other information as the board may require; and
- f. a certification by the chief financial officer of the property tax increment base, if property tax increment revenue is to be pledged, and of the revenue increment base for each other pledged revenue. If the amount of any such revenue increment base cannot be certified, then the chief financial officer shall estimate the amount and describe the basis for preparing the estimate and the manner in which the revenue increment base will be determined after adoption of the final plan.

C.52:27D-471 Submissions of final revenue allocation plan.

23. A final revenue allocation plan shall be submitted to the governing body of the municipality for approval by ordinance. When an ordinance embodying a final revenue allocation plan has been introduced in writing at a meeting of the governing body and approved on first reading, which may be by title, by a majority of the authorized membership thereof, it shall be submitted, together with all included and incorporated certificates and documents and such additional supporting documentation as the board may by rule prescribe, to the board.

The board shall approve the plan if it determines that:

- a. the planned developments are likely to be realized and would not be accomplished by private enterprise without the creation of the district and the financing of the proposed project or projects;

b. the pledged revenues will be sufficient to pay debt service on bonds and discharge any obligations undertaken by the district agent to effectuate the plan;

c. the credit of the municipality and its ability to pay the principal of and interest on its debts and to provide essential public services will not be impaired;

d. any insufficiency or shortfall in the amount of the revenues or guarantees pledged to pay debt service or bonds issued to effectuate the plan would not pose inappropriate risk or undue financial hardship to the taxpayers of the community;

e. there are no other factors which, in the determination of the board, will impair the credit of the municipality or reduce its ability to pay punctually the principal of and interest on its debts and supply other essential public improvements and services; and

f. the planned development does one or more of the following: promote approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life of our citizens.

C.52:27D-472 Written recommendations by board.

24. a. The board may make written recommendations as to any aspect of the plan and any related fiscal matters of the municipality or the district agent which, in the determination of the board, must be changed in order to effectuate the plan, and the board may condition its approval of the plan upon the adoption of its recommendations.

b. The board shall approve, approve with conditions, or disapprove the plan within 60 days of its receipt of an application which the board has deemed to be complete. If the board does not act within 60 days the plan shall be deemed approved. If the board disapproves the plan it shall set forth its reasons in writing within 30 days of its disapproval. The governing body, upon recommendation of the district agent, may amend the ordinance and resubmit it to the board.

c. Upon receipt of the approved ordinance from the board the municipal governing body may adopt the ordinance at a meeting of the governing body by a majority of the authorized membership thereof. Any changes to the plan as embodied in the ordinance, including the pledge or utilization of eligible revenues subject, however, to any rights of bondholders shall be by amendment of the ordinance adopted and approved by the same method as prescribed in section 17 of P.L.2001, c.310 (C.52:27D-465) in connection with the proposed preliminary revenue allocation plan included in the ordinance establishing the district.

C.52:27D-473 Calculation of property tax increment.

25. If the preliminary revenue allocation plan has designated the property tax increment as a pledged revenue, the property tax increment shall be calculated and paid to the revenue allocation fund or the bond trustee, as appropriate, as provided hereunder.

a. Upon the striking of the tax rate in each year following the adoption of the ordinance creating the district, the chief financial officer of the municipality, with assistance provided by the assessor and collector, shall calculate the amount of property tax increment, if any, for each revenue allocation district within the municipality and shall certify to the district agent of each such district a copy of that calculation. Thereafter the chief financial officer shall, within 10 days after each date fixed by statute for the payment of property taxes, cause to be deposited in the revenue allocation fund of the district agent or paid to the trustees as provided in the resolution authorizing the issuance of bonds the percentage of the property tax increments certified in the plan as designated to be so deposited or paid. The calculation of the property tax increment shall be based on the amount to be billed at the quarterly payment date, regardless of whether or not the increment is actually collected from the taxpayers within the district.

b. Whenever an added assessment shall occur within a district, the chief financial officer of the municipality shall notify the district agent and thereafter shall, within 10 days of the date fixed by law for payment of property taxes on such added assessment, cause to be paid to the revenue allocation fund or the bond trustee, as appropriate, the property taxes, or a percentage thereof as designated in the plan, billed upon such added assessment, regardless of whether or not the tax or any portion thereof is actually collected.

c. Whenever an omitted assessment which if not omitted would have been included in the computation of the tax increment of a district occurs, the chief financial officer of the municipality shall notify the district agent and thereafter shall, within 10 days after the date fixed by statute for payment of taxes upon such omitted assessments, cause to be deposited to the revenue allocation fund or paid to the bond trustees of the district, as appropriate, the proportion of tax upon such omitted assessments designated in the plan for such deposit or payment, regardless of whether or not the tax or any portion thereof is actually collected.

d. In no event shall any changes in assessed valuation within a district due to appeals or correction of errors with respect to a tax year subsequent to the creation of the district alter the amount of property tax increment certified pursuant to this section for that tax year.

e. In no event shall any changes in assessed valuation within a district due to appeals or correction of errors alter the property tax increment base of the district.

f. Whenever a revaluation or general reassessment occurs in a municipality which has designated one or more districts, the property tax increment base for each district shall be adjusted to equal the absolute difference between the taxable value of the property in the district after revaluation or reassessment less the amount of the property tax increment base for the year immediately prior to the revaluation or reassessment divided by the adjusted tax rate. The adjusted tax rate shall be a fraction, the numerator of which is the total tax levy of the municipality before revaluation or reassessment and the denominator of which is the total taxable value of all taxable property in the municipality after revaluation or reassessment.

C.52:27D-474 Deposit of pledged revenues.

26. If the preliminary revenue allocation plan has designated any eligible revenues, in addition to or other than the property tax increment, as a pledged revenue, the other pledged revenues shall be deposited as provided in this section.

a. The collector of any pledged revenues shall certify to the municipal chief financial officer the amount of the eligible revenue collected in the preceding calendar year no later than January 30 of each year and shall pay to the municipality such amount, or the percentage thereof designated in the plan, beginning in the first calendar year after the creation of the district.

b. The municipality shall include in its budget the amount certified as collected in the preceding year and shall pay to the district agent for deposit in the revenue allocation financing fund the amount certified in the plan as designated for such payment.

c. Payments in lieu of taxes shall be deposited in four equal installments, regardless of the date or dates fixed for such payments by statute, agreement or otherwise.

C.52:27D-475 Submission of operating budget.

27. The district agent shall submit its operating budget for the district annually to the Director of the Division of Local Government Services in the Department of Community Affairs. If the district agent certifies that the budget is in compliance with a preliminary or final financing plan and all other relevant statutes and rules, the director shall approve the budget within 45 days of receipt. If the director disapproves the budget he shall state the reasons therefor, in writing. The district agent may then make the necessary changes and resubmit the budget for approval. The director may adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to ensure the fiscal integrity of

districts and effectuate the intent of the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.).

C.52:27D-476 Revenue allocation fund for district.

28. The district agent shall establish and maintain a special fund called the "(Name of district agent) Revenue Allocation Fund," and herein referred to as "district fund" or "fund."

The fund shall be used by the district agent for purposes of the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.), including but not limited to:

- a. paying the project costs;
- b. paying the principal of and interest on bonds or other obligations issued or guaranteed pursuant to the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.);
- c. prepaying the principal of and interest on the bonds or other obligations;
- d. paying additional property tax increment revenue, if any, to taxing entities, as provided for in subsections b. and c. of section 29 of P.L.2001, c.310 (C.52:27D-477) or in the final revenue allocation plan; and
- e. reimbursing the municipality for any payments made by the State pursuant to the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.) to pay debt service on any qualified bonds issued pursuant to section 35 of P.L.2001, c.310 (C.52:27D-483).

C.52:27D-477 Payment of project costs; distribution of moneys.

29. a. Prior to the adoption of a final revenue allocation plan, the district agent may draw money from the revenue allocation fund for purposes of paying all project costs incurred in connection with the development of the final revenue allocation plan as provided in the approved operating budget, including a reserve for project costs if such reserve is part of the preliminary plan.

b. At the end of each calendar year, any moneys in the fund not pledged to bondholders or otherwise required by the district agent for development of the plan shall be distributed to the appropriate taxing or revenue collecting entities that shall forgo the pledged revenues. The revenues shall be distributed by the district agent in proportion to the taxing effort of each taxing or revenue collecting entity in the year of distribution; except that no revenues deposited in the fund shall be included in the calculation of any adjustment payments payable to an intermunicipal account pursuant to statute.

c. After the adoption of the final revenue allocation plan the district agent may decide to distribute to the taxing or revenue collecting entities that shall forgo the revenues pursuant to the "Revenue Allocation District

Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.) a portion of the revenue increments received by the district agent not pledged to the payment of debt service or necessary to pay project costs. The revenues shall be distributed in proportion to the taxing or revenue collecting effort of each such taxing or revenue collecting entity in the year of distribution.

d. Moneys in the fund may be invested in the State of New Jersey Cash Management Fund established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4) or in any securities that a local government is permitted to purchase pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1).

C.52:27D-478 Termination, dissolution of district.

30. Subject to the limitations contained in the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.), each district shall remain in existence until obligations for any project in that district cease to be outstanding; provided, however, the district may be terminated if sufficient moneys have been deposited in the revenue allocation fund, which, when invested in obligations of or guaranteed by the United States government, will be sufficient to pay when due the principal of and interest on the bonds at maturity or any redemption date or full payment of any other obligations, and if the board approves the dissolution of the district. The Division of Local Government Services in the Department of Community Affairs may recommend to the municipality the dissolution of a district which has not taken substantial steps to implement the plan, so long as there are no bonded obligations outstanding or contractual obligations to pay any part of project costs.

C.52:27D-479 Calculation of general tax rate.

31. a. In calculating the general tax rate levied each year, the aggregate amount of the ratable increments of the revenue allocation districts that have been pledged to bondholders or are otherwise required by the district agent for the development of the plan shall not be considered a part of the total taxable value of land and improvements within the municipality.

b. In calculating the net valuation on which school district taxes are apportioned, the aggregate amount of the ratable increments in the revenue allocation district shall be excluded.

c. For purposes of this section, "ratable increment" means the taxable value of all property assessed within a revenue allocation district for the tax year, minus the property tax increment base.

C.52:27D-480 Powers of district agent following adoption of ordinance.

32. Upon approval of the resolution by the board and adoption of an ordinance approving or adopting: a. the final revenue allocation plan by the

municipal governing body, or b. a determination regarding a particular project for which there exist sufficient eligible revenues within the district to pay the principal of and interest on obligations issued to finance such project, the district agent shall have the power to incur indebtedness, borrow money and issue its bonds or notes for purposes of financing a project or funding or refunding its bonds or notes. If the district agent is the municipal governing body, any pledge of revenues or funds and obligations incurred shall be limited to the revenues and property accruing to the municipality as district agent and shall not be deemed to include any other municipal revenue or property unless such revenues are pledged or obligations are incurred pursuant to the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.). The district agent may from time to time issue its bonds or notes in such principal amounts as in the opinion of the district agent are necessary to provide sufficient funds for all or any portion of project costs, 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 has or has not become due; the establishment or increase of such reserves to secure or to pay the bonds or notes or interest thereon; and all other costs or expenses of the district agent incident to and necessary to carrying out its corporate purposes and powers.

Any provisions of law to the contrary notwithstanding, a bond issued pursuant to the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.) shall be fully negotiable within the meaning and for all purposes of Title 12A of the New Jersey Statutes, and each holder of the bond, or a coupon appurtenant thereto, by accepting the bond or coupon shall be conclusively deemed to have agreed that the bond or coupon is and shall be fully negotiable within the meaning and for the purposes of that title.

C.52:27D-481 Issuance of bonds, notes.

33. Bonds or notes of the district agent shall be authorized by a resolution or resolutions of the district agent and may be issued in one or more series and shall bear such dates, mature at such times, bear interest at such rates of interest per annum, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources and in such medium of payment at such places within or without the State, and be subject to such terms of redemption, with or without premium, as the resolution or resolutions may provide.

Notwithstanding the provisions of any other law to the contrary related to such district agent, bonds or notes of the district agent may be sold at

public or private sale at such price and in such manner as the district agent shall determine. Every bond shall mature and be paid not later than 35 years from the date thereof.

Bonds or notes may be issued under the provisions of the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.) without any other proceeding or the occurrence of any other conditions or other things than those proceedings, conditions or things which are specifically required by the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

Bonds or notes of the district agent issued under the provisions of the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.) shall contain a statement to the effect that they are issued pursuant to the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.) and entitled to the provisions of the "Revenue Allocation District Financing Act," sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 et seq.).

C.52:27D-482 Bonds, notes considered general obligations.

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

a. pledge of eligible revenues and any other revenues derived from leases, sales agreements, service contracts or similar contractual arrangements with one or more persons, firms, partnerships or corporations, whether or not the same relate to the project or part thereof financed with the bonds or notes;

b. pledge of grants, subsidies, contributions or other payments to be received from the United States of America or any instrumentality thereof, or from any State, county or municipal governmental body or agency;

c. a first mortgage on all or any part of the property, real or personal, of the district agent then owned or thereafter to be acquired; or

d. pledge of any moneys, funds, accounts, securities and other funds, including the proceeds of the bonds or notes.

C.52:27D-483 Guarantee of bonds.

35. The municipal governing body may provide for the guarantee of any such bonds and may issue general obligation bonds to provide for the funding of such guarantee which shall be authorized pursuant to the

provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq. Such guarantees shall be set forth in the final revenue allocation plan approved pursuant to section 23 of P.L.2001, c.310 (C.52:27D-471). To the extent that the municipality provides for a full faith and credit guarantee of any loan to a redeveloper or any bonds but determines not to authorize the issuance of bonds or notes to provide for the funding source thereof, it may do so by resolution approved by a majority of the full governing body. To the extent that bonds or notes are authorized as provided above, such bonds or notes shall be authorized pursuant to the provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall be deductible from the gross debt of the municipality until such time as such bonds or notes are actually issued, and only up to the amount actually issued, to fund such guarantee.

The district agent may file an application with the board to qualify an issue of its bonds pursuant to the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.) provided, however, that only municipal qualified bonds issued by a municipality, as defined in the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.) shall constitute debt of such municipality and be secured by the full faith and credit of such municipality. Intention to file such an application shall be set forth in the final revenue allocation plan approved pursuant to section 23 of P.L.2001, c.310 (C.52:27D-471). Bonds may be issued by the district agent as municipal qualified bonds upon the review and approval of the board as provided in the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.). In considering the ordinance, the board may require the governing body to adopt resolutions restricting or limiting any future issuance of bonds for any purpose.

Upon the issuance of such bonds and certification to the State Treasurer of the name and address of the paying agent, the maturity schedule, interest rates and dates of payment of debt service, the State Treasurer shall withhold municipal qualified revenues payable to the municipality in amounts sufficient to pay debt service on such bonds as the same shall mature and become due. The State Treasurer shall on or before each principal and interest payment date forward such withheld amounts to the paying agent for the sole purpose of paying debt service on such bonds. As such withheld amounts are forwarded to the paying agent, the district agent shall return a like amount of eligible revenues received by the district agent, if any, which may be applied to the payment of municipal operating expenses.

Any financial instrument issued by a district agent that is secured in whole or in part by eligible revenues shall be subject to the review and approval of the board. That review and approval shall be made prior to approval of a resolution or agreement authorizing the financing. The board

shall be entitled to receive from the applicant an amount sufficient to provide for all reasonable professional and other fees and expenses incurred by it for the review, analysis and determination with respect thereto. As part of its review, the board shall specifically solicit comments from the Office of State Planning in addition to comments from the public. As part of the board's review and approval, it shall consider where appropriate one or more of the following: whether the redevelopment project or plan promotes approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life our citizens.

C.52:27D-484 Power of district agent to secure payment.

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

a. secure the bonds or notes as provided in section 35 of P.L.2001, c.310 (C.52:27D-483);

b. covenant against pledging all or any part of its revenues or receipts from its lease, sales arrangement, service contracts or other security instruments, of the revenues or receipts under any of the foregoing or the proceeds thereof, or against mortgaging or leasing all or any part of its real or personal property then owned or thereafter acquired, or against permitting or suffering any of the foregoing;

c. covenant with respect to limitations on any right to sell, mortgage, lease or otherwise dispose of any project or any part thereof or any property of any kind;

d. covenant as to any bonds and notes to be issued and the limitations thereon and the terms and conditions thereof and as to the custody, application, investment, and disposition of the proceeds thereof;

e. 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;

f. 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;

g. provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;

- h. covenant against extending the time for the payment of bonds or notes or interest thereon;
- i. covenant as to the redemption of bonds or notes and privileges of exchange thereof for other bonds or notes of the district agent;
- j. covenant as to the fixing and collection of rents, fees, rates and other charges, the amount to be raised each year or other period of time by rents, fees, rates and other charges and as to the use and disposition to be made thereof;
- k. covenant to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for construction, operating expenses, tax rebate, payment or redemption of bonds or notes; reserves or other purposes and as to the use, investment, and disposition of the moneys held in these funds;
- l. 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 must consent thereto, and the manner in which the consent may be given;
- m. covenant as to the construction, improvement, operation or maintenance of any project and its other real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;
- n. provide for the release of property, leases or other agreements, or revenues and receipts from any pledge or mortgage and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage;
- o. 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 any or all of the bonds, notes or other obligations of the district agent shall become or may be declared due and payable before maturity and the terms and conditions upon which the declaration and its consequences may be waived;
- p. vest in a trustee or trustees within or without the State such property rights, powers and duties in trust as the district agent may determine, including the right to foreclose any mortgage, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of any bonds or notes issued pursuant to this section and to limit or abrogate the right of the holders of any bonds or notes of the district agent to appoint a trustee under the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.), and to limit the rights, duties and powers of the trustee;
- q. execute all mortgages, leases, sales agreements, service contracts, 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;

r. 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 district agent with the holders of its bonds or notes;

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

t. make covenants other than or in addition to the covenants authorized by the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.) of like or different character, and to make such covenants to do or refrain from doing such acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or notes or which, in the absolute discretion of the district agent will tend to make bonds or notes more marketable, notwithstanding that the covenants, acts or things may not be enumerated herein.

C.52:27D-485 Pledge of district agent valid, binding.

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

C.52:27D-486 Immunity from personal liability.

38. Neither the directors of the district agent nor any person executing bonds or notes issued pursuant to the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.) shall be liable personally on the bonds or notes by reason of the issuance thereof.

C.52:27D-487 Establishment of reserves, funds, account.

39. The district agent may establish such reserves, funds or account as may be, in its discretion, necessary or desirable to further the accomplishment of the purposes of the district agent or to comply with the provisions of any agreement made by or any resolution of the district agent.

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 the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.), and such bonds or notes shall be authorized security for any and all public deposits.

C.52:27D-488 Bonds exempt from taxation.

40. Bonds, notes or other obligations issued pursuant to the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.) are for an essential public and governmental purpose, and the bonds, notes or other obligations, their transfer and the interest and premium, if any, thereon and the income therefrom, including any profit made on the sale thereof, and all assessments, charges, funds, revenues, income and other moneys pledged or available to pay or secure the payments of the bonds, or interest thereon, shall be exempt from taxation of every kind by the State and the municipality, except transfer inheritance and estate taxes unless exemptions from those taxes have been provided under other laws.

C.52:27D-489 Severability.

41. If any section, part, phrase, or provision of the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.) of the application thereof to any person, project or circumstances, be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of the "Revenue Allocation District Financing Act," P.L.2001, c.310 (C.52:27D-459 et seq.) or the application thereof to other persons, projects or circumstances.

42. Section 29 of P.L.1992, c.79 (C.40A:12A-29) is amended to read as follows:

C.40A:12A-29 Issuance of bonds, notes.

29. a. Bonds and notes issued by a redevelopment entity pursuant to this act shall be authorized by resolution of the redevelopment entity and may be issued in one or more series and shall be sold in any one of the following manners: (1) at public sale at not less than par after advertisement in a newspaper of general circulation in the municipality or county and in a

financial paper published in the city of Philadelphia, Pennsylvania, or the city of New York, New York, one week prior to the sale; (2) at private sale without advertisement at not less than par to a municipality, county, the State or federal government; (3) at public sale to any willing buyer at less than par and at private sale to any willing buyer without advertisement at par or less than par, upon application to and prior approval of the Local Finance Board in the Department of Community Affairs.

b. (Deleted by amendment, P.L.2001, c.310).

c. Bonds issued to finance redevelopment projects may be secured by the assets and revenues of such projects. A municipality or redevelopment entity financing redevelopment projects through the issuance of bonds may pledge the property and revenues of those projects, or any of them, for repayment of those bonds, and shall pay such rate of interest thereon as the governing body may deem for the best interest of the county, municipality or redevelopment entity, as applicable.

d. Bonds issued to finance housing projects may be secured by the assets and revenues of those housing projects or by contractual agreements with the federal government. A municipality, county, or housing authority financing housing projects through the issuance of bonds may pledge the property and revenues of those projects, or any of them, for the repayment of those bonds, and shall pay such rate of interest thereon as the county or municipal governing body, as the case may be, may deem for the best interest of the county or municipality.

e. (Deleted by amendment, P.L.2001, c.310).

43. Section 30 of P.L.1992 c.79 (C.40A:12A-30) is amended to read as follows:

C.40A:12A-30 Power of redevelopment entity issue bonds, notes.

30. a. A redevelopment entity shall have the power and is hereby authorized to issue, from time to time, its bonds, bond anticipation notes and other notes and obligations in such principal amounts as in its opinion shall be necessary to provide sufficient funds for achieving any of its corporate purposes, including, but not limited to: the making of mortgage loans, the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds, bond anticipation notes and other notes and obligations issued by it whether or not such have become due; the establishment or increase of reserves to secure or to pay such bonds, bond anticipation notes and other notes and obligations or interest thereon; and all costs or expenses incident to and necessary or convenient to carry out its corporate purposes and powers.

b. A redevelopment entity may issue such bonds, bond anticipation notes or other notes or obligations as it may determine, including bonds,

bond anticipation notes or other notes or obligations as to which the principal and interest are payable: (1) exclusively from the income and revenues of the redevelopment entity resulting from projects financed with the proceeds of such bonds, bond anticipation notes or other notes or obligations; (2) exclusively from the income and revenues of the redevelopment entity resulting from certain projects, whether or not such projects were financed in whole or in part from the proceeds of such bonds, bond anticipation notes or other notes or obligations; or, (3) from its revenues generally. Any bonds, bond anticipation notes or other notes or obligations may be additionally secured by a pledge of any grant, subsidy or contribution from the United States of America or an agency or instrumentality thereof or the State or any agency, instrumentality or political subdivision thereof, or any person, firm or corporation or a pledge of any income or revenues, funds or moneys of the redevelopment entity from any source whatsoever.

c. Whether or not the bonds, bond anticipation notes and other notes and obligations issued pursuant to this act are of such form and character as to be negotiable instruments under the terms of Title 12A, Commercial Transactions, New Jersey Statutes, such bonds, bond anticipation notes and other notes and obligations and any coupon thereof are hereby made 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, bond anticipation notes and other notes and obligations of a redevelopment entity issued under the provisions of this act shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the redevelopment entity and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision, nor be or constitute a pledge of the faith and credit of the State or of any political subdivision; but all such bonds, bond anticipation notes and other notes and obligations, unless funded or refunded by bonds, bond anticipation notes or other notes or obligations of the redevelopment entity shall be payable from revenues or funds pledged or available for their payment as authorized in this act. Each bond, bond anticipation note or other note or obligation shall contain on its face a statement to the effect that the redevelopment entity is obligated to pay the principal thereof or the interest thereon only from the revenues or funds of the redevelopment entity, and that neither the State nor any political subdivision thereof is obligated to pay such 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 such bonds, bond anticipation notes or other notes or obligations.

e. 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 a redevelopment entity to incur indebtedness or liability on behalf of or payable by this State or any political subdivision thereof.

44. Section 31 of P.L.1992, c.79 (C.40A:12A-31) is amended to read as follows:

C.40A:12A-31 Provisions of bond resolution.

31. Any bond resolution of a redevelopment entity providing for or authorizing the issuance of any bonds may contain provisions, and such entity, in order to secure the payment of such bonds and in addition to its other powers, shall have power by provision in such bond resolution to covenant and agree with the several holders of such bonds, as to:

a. The custody, security, use, expenditure or application of the proceeds of the bonds;

b. The construction and completion, or replacement, of any project;

c. The use, regulation, operation, maintenance, insurance or disposition of any project, or restrictions on the exercise of the powers of the entity to dispose, or to limit or regulate the use, of any project;

d. Payment of the principal of or interest on the bonds, or any other obligations, and the sources and methods thereof, the rank or priority of bonds or obligations as to any lien or security, or the acceleration of the maturity of bonds or obligations;

e. The use and disposition of any moneys of the redevelopment entity, including project revenues;

f. Pledging, setting aside, depositing or trusteeing all or any part of the revenues or other moneys of the redevelopment entity to secure the payment of the principal of or interest on the bonds or any other obligations or the payment of expenses of operation or maintenance of any project, and the powers and duties of any trustee with regard thereto;

g. The setting aside out of the project revenues or other moneys of the redevelopment entity of reserves and sinking funds, and the source, custody, security, regulation, application and disposition thereof;

h. Determination or definition of the project revenues or of the expenses of operation and maintenance of a project;

i. The rents, rates, fees, or other charges in connection with, or for the use of services of, or otherwise relating to any project, including any parts thereof theretofore constructed or acquired and any parts, extensions, replacements or improvements thereof thereafter constructed or acquired, and the fixing, establishment, collection and enforcement of the same, the

amount or amounts of project revenues to be produced thereby, and the disposition and application of the amounts charged or collected;

j. The assumption or payment or discharge of any indebtedness, liens or other claims relating to any part of any project or any obligations having or which may have a lien on any part of the project revenues:

k. Limitations on the issuance of additional bonds or any other obligations or on the incurrence of indebtedness of the redevelopment entity;

l. Limitations on the powers of the redevelopment entity to construct, acquire or operate any structures, facilities or properties which may compete or tend to compete with any of its projects;

m. Vesting in a trustee or trustees within or without the State such property, rights, powers and duties in trust as the redevelopment entity may determine which may include any or all of the rights, powers and duties of the trustee appointed by the holders of bonds pursuant to this act, and limiting or abrogating the right of such holders to appoint a trustee pursuant to this act or limiting the rights, duties and powers of such trustee;

n. Payment of the costs or expenses incident to the enforcement of the bonds or of the provisions of the bond resolution or of any covenant or agreement of the redevelopment entity with the holders of bonds;

o. The procedure, if any, by which the terms of any covenant or agreement with, or duty to, the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given or evidenced; or

p. Any other matter or course of conduct which, by recital in the bond resolution, is declared to further secure the payment of the principal of or interest on bonds and to be part of any covenant or agreement with the holders of bonds.

All provisions of the bond resolution and all covenants and agreements shall constitute valid and legally binding contracts between the redevelopment entity and the several holders of the bonds, regardless of the time of issuance of such bonds, and shall be enforceable by any such holder or holders by appropriate action or proceeding in any court of competent jurisdiction, including a proceeding in lieu of prerogative writ.

45. Section 32 of P.L.1992, c.79 (C.40A:12A-32) is amended to read as follows:

C.40A:12A-32 Appointment of trustee for bondholders.

32. a. If the bond resolution of a redevelopment entity authorizing or providing for the issuance of a series of its bonds shall provide in substance that the holders of the bonds of such series shall be entitled to the benefits of this section, then if there shall be a default in the payment of principal of

or interest on any bonds of such series after the same shall become due, whether at maturity or upon call for redemption, and default shall continue for a period of 30 days, or if the redevelopment entity shall fail or refuse to comply with any of the provisions of P.L. 1992, c. 79, or shall fail or refuse to carry out and perform the terms of any contract with the holders of the bonds, and failure or refusal shall continue for a period of 30 days after written notice to the redevelopment entity of its existence and nature, the holders of 25% in aggregate principal amount of the bonds of such series then outstanding by instrument or instruments filed in the office of the Secretary of State and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds of such series for the purposes provided in this section.

b. The trustee may, and upon written request of the holders of 25% in aggregate principal amount of the bonds of such series then outstanding shall, in his or its own name:

(1) By any action or proceeding, enforce all rights of the holders of such bonds, including the right to require the redevelopment entity to charge and collect charges adequate to carry out any contract as to, or pledge of, project revenues, and to require the entity to carry out and perform the terms of any contract with the holders of such bonds or its duties under P.L. 1992, c. 79;

(2) Bring an action upon all or any part of such bonds or interest coupons or claims appurtenant thereto;

(3) By action, require the redevelopment entity to account as if it were the trustee of an express trust for the holders of such bonds;

(4) By action, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; or

(5) Declare all such bonds due and payable, whether or not in advance of maturity, upon 30 days' prior notice in writing to the redevelopment entity and, if all defaults shall be made good, then with the consent of the holders of 25% of the principal amount of such bonds then outstanding, annul such declaration and its consequences.

c. The trustee shall, in addition to the foregoing, possess all of the powers necessary for the exercise of the functions specifically set forth herein or incident to the general representation of the holders of bonds of such series in the enforcement and protection of their rights.

d. In any action or proceeding by the trustee, reasonable fees, counsel fees and expenses of the trustee and of the receiver, if any, appointed pursuant to P.L. 1992, c. 79, shall, if allowed by the court, constitute taxable costs and disbursements, and all costs and disbursements, allowed by the court, shall be a first charge upon any charges and revenues of the redevelopment entity pledged for the payment or security of bonds of such series.

46. Section 33 of P.L.1992, c.79 (C.40A:12A-33) is amended to read as follows:

C.40A:12A-33 Appointment of receiver.

33. If the bond resolution of a redevelopment entity authorizing or providing for the issuance of a series of its bonds shall provide in substance that the holders of the bonds of such series shall be entitled to the benefits of section 32 of P.L.1992, c.79 (C.40A:12A-32) and shall further provide in substance that a trustee appointed pursuant to that section or having the powers of such a trustee shall have the powers provided by this section, then the trustee, whether or not all of the bonds of such series shall have been declared due and payable, shall be entitled to the appointment of a receiver of the project or projects of the redevelopment entity, and such receiver may enter upon and take possession of the project or projects and, subject to any pledge or contract with the holders of bonds of the redevelopment entity, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance or reconstruction of the project or projects and proceed in a commercially feasible manner with such acquisition, construction, operation, maintenance or reconstruction which the redevelopment entity is under any obligation to do, and operate, maintain and reconstruct the project or projects and fix, charge, collect, enforce and receive the charges and all revenues thereafter arising subject to any pledge thereof or contract with the holders of bonds relating thereto and perform the public duties and carry out the contracts and obligations of the redevelopment entity in the same manner as the agency or entity itself might do and under the direction of the court.

47. Section 34 of P.L.1992, c.79 (C.40A:12A-34) is amended to read as follows:

C.40A:12A-34 Property exempt from levy, sale.

34. All property of a redevelopment entity shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a redevelopment entity be a charge or lien upon its property; provided, that nothing herein contained shall apply to or limit the rights of the holder of any bonds to pursue any available remedy for the enforcement of any pledge or lien given by a redevelopment entity.

48. This act shall take effect on the 60th day following enactment.

Approved January 3, 2002.

CHAPTER 311

AN ACT concerning Pinelands municipal landfill site closure and redevelopment, and amending P.L.1996, c.124.

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

1. Section 2 of P.L.1996, c.124 (C.13:1E-116.2) is amended to read as follows:

C.13:1E-116.2 Definitions regarding municipal landfill sites.

2. As used in this act:

"Closure" means all activities associated with the design, purchase, construction or maintenance of all measures required by the department, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from municipal solid waste landfills subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of final earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems, and long-term operations and maintenance, at the site of any municipal solid waste landfill that is not listed on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. s.9605.

"Closure and remediation costs" means all reasonable costs associated with the closure and remediation of a municipal solid waste landfill except that "closure and remediation costs" shall not include any costs incurred in financing the closure or remediation.

"Commercial solid waste" means any nonhazardous solid waste derived from wholesale, retail or service establishments, including stores, markets, theaters, offices, restaurants, warehouses, or from other non-manufacturing commercial activities.

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the State pursuant to the provisions of section 3 of P.L.1996, c.124 (C.13:1E-116.3).

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

"Household solid waste" means any solid waste derived from households, including but not limited to single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, except that "household solid waste"

shall not include septic waste as defined in section 3 of P.L.1970, c.40 (C.48:13A-3).

"Industrial solid waste" means any solid waste derived from manufacturing, industrial and research and development processes and operations that is not a hazardous waste as defined in section 1 of P.L.1976, c.99 (C.13:1E-38), except that "industrial solid waste" shall not include mining waste, oil waste, gas waste, or cement kiln dust waste.

"Municipal solid waste landfill" means a landfill that ceased operations prior to January 1, 1982 and received for disposal household solid waste and at least one of the following: (1) commercial solid waste; (2) industrial solid waste; or (3) waste material that was received for disposal prior to October 21, 1976 and that is included within the definition of hazardous waste adopted by the federal government pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. s.6921 et seq. A "municipal solid waste landfill" shall not include any landfill that is approved for disposal of hazardous waste and regulated pursuant to Subchapter III of the "Resource Conservation and Recovery Act," 42 U.S.C. s.6921 et seq. A "municipal solid waste landfill" shall include any "Pinelands municipal landfill" regardless of the date the landfill ceased operations.

"Pinelands municipal landfill" means a municipal solid waste landfill that is located in a rural municipality within a non-growth area in the Pinelands area as defined in section 3 of P.L.1979, c.111 (C.13:18A-3) and the rural Pinelands municipality within which the landfill is located has participated in the pilot program for rural economic development developed by the Pinelands Commission pursuant to section 2 of P.L.1997, c.233 (C.13:18A-57).

"Project" or "redevelopment project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within an area of land whereon a municipal solid waste landfill is or has been located, under a redevelopment agreement with the State pursuant to section 3 of P.L.1996, c.124 (C.13:1E-116.3). Any redevelopment project to be undertaken by a developer within an area of land whereon a Pinelands municipal landfill is or has been located shall be consistent with the recommendations of the pilot program for rural economic development developed by the Pinelands Commission pursuant to section 2 of P.L.1997, c.233 (C.13:18A-57) and the report thereon submitted to the Governor and the Legislature pursuant to section 3 of P.L.1997, c.233 (C.13:18A-58).

"Redevelopment agreement" means an agreement between the State and a developer under which the developer agrees to perform any work or undertaking necessary for the environmentally sound and proper closure and remediation of the municipal solid waste landfill located at the site of the redevelopment project, and for the clearance, development or redevelopment, construction or rehabilitation of any structure or improvement of commercial, industrial or public structures or improvements within an area of land whereon a municipal solid waste landfill is or has been located pursuant to section 3 of P.L.1996, c.124 (C.13:1E-116.3), and the State agrees that the developer shall be eligible for the reimbursement of 75% of the costs of closure and remediation of the municipal solid waste landfill from the fund established pursuant to section 6 of P.L.1996, c.124 (C.13:1E-116.6) as authorized pursuant to section 4 of P.L.1996, c.124 (C.13:1E-116.4).

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

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 312

AN ACT concerning farmland assessment, and amending P.L.1999, c.152 and P.L.1964, c.48.

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

1. Section 29 of P.L.1999, c.152 (C.13:8C-29) is amended to read as follows:

C.13:8C-29 **Payments to municipalities in lieu of taxes for lands acquired using dedicated money.**

29. a. (1) (a) To the end that municipalities may not suffer a loss of taxes by reason of the acquisition and ownership by the State of lands in fee simple for recreation and conservation purposes, or the acquisition and ownership by qualifying tax exempt nonprofit organizations of lands in fee

simple for recreation and conservation purposes that become certified exempt from property taxes pursuant to P.L.1974, c.167 (C.54:4-3.63 et seq.) or similar laws, using constitutionally dedicated moneys in whole or in part, the State shall pay annually on October 1 to each municipality in which lands are so acquired and owned, for a period of 13 years following an acquisition the following amounts: in the first year a sum of money equal to the tax last assessed and last paid by the taxpayer upon this land and the improvements thereon for the taxable year immediately prior to the time of its acquisition and thereafter the following percentages of the amount paid in the first year: second year, 92%; third year, 84%; fourth year, 76%; fifth year, 68%; sixth year, 60%; seventh year, 52%; eighth year, 44%; ninth year, 36%; 10th year, 28%; 11th year, 20%; 12th year, 12%; 13th year, 4%.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph to the contrary, any payment made pursuant to that subparagraph shall be not less than the amount that would be paid as provided pursuant to paragraph (2) of this subsection.

(2) After the 13th year, or sooner as provided pursuant to subparagraph (b) of paragraph (1) of this subsection, the State shall pay annually on October 1 to each municipality in which lands are so acquired and owned the following amounts: \$2 per acre of lands so acquired and owned for any municipality for which all lands owned in fee simple by the State or by a qualifying tax exempt nonprofit organization for recreation and conservation purposes constitute less than 20% of the total land area of the municipality; \$5 per acre of lands so acquired and owned for any municipality for which all lands owned in fee simple by the State or by a qualifying tax exempt nonprofit organization for recreation and conservation purposes constitute at least 20% but less than 40% of the total land area of the municipality; \$10 per acre of lands so acquired and owned for any municipality for which all lands owned in fee simple by the State or by a qualifying tax exempt nonprofit organization for recreation and conservation purposes constitute at least 40% but less than 60% of the total land area of the municipality; and \$20 per acre of lands so acquired and owned for any municipality for which all lands owned in fee simple by the State or by a qualifying tax exempt nonprofit organization for recreation and conservation purposes constitute at least 60% of the total land area of the municipality.

b. In the event that land acquired by the State, a local government unit, a qualifying tax exempt nonprofit organization, or the Palisades Interstate Park Commission for recreation and conservation purposes was assessed at an agricultural and horticultural use valuation in accordance with provisions of the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.) at the time of its acquisition by the State, local government unit, qualifying tax exempt nonprofit organization, or the Palisades Interstate

Park Commission, no roll-back tax pursuant to section 8 of P.L.1964, c.48 (C.54:4-23.8) shall be imposed as to this land nor shall this roll-back tax be applicable in determining the annual payments to be made pursuant to subsection a. of this section by the State to the municipality in which this land is located.

c. Any payments made by the State pursuant to this section shall be paid from the General Fund but not from constitutionally dedicated moneys.

d. All sums of money received by the respective municipalities as compensation for loss of tax revenue pursuant to this section shall be applied to the same purposes as is the tax revenue from the assessment and collection of taxes on real property of these municipalities, and to accomplish this end the sums shall be apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt.

e. For the purposes of this section, lands owned in fee simple by the State for recreation and conservation purposes shall mean State parks and forests, as defined pursuant to section 3 of P.L.1983, c.324 (C.13:1L-3), State wildlife management areas, and any other lands owned in fee simple by the State and administered by the Department of Environmental Protection for recreation and conservation purposes.

2. Section 8 of P.L.1964, c.48 (C.54:4-23.8) is amended to read as follows:

C.54:4-23.8 Determination of amount of rollback taxes.

8. When land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of P.L.1964, c.48 (C.54:4-23.1 et seq.), is applied to a use other than agricultural or horticultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current tax year (the year of change in use) and in such of the two tax years immediately preceding, in which the land was valued, assessed and taxed as herein provided.

If the tax year in which a change in use of the land occurs, the land was not valued, assessed and taxed under P.L.1964, c.48 (C.54:4-23.1 et seq.), then such land shall be subject to roll-back taxes for such of the two tax years, immediately preceding, in which the land was valued, assessed and taxed hereunder.

Notwithstanding the provisions of any law, rule, or regulation to the contrary, land which is valued, assessed and taxed under the provisions of P.L.1964, c.48 (C.54:4-23.1 et seq.) and is acquired by the State, a local government unit, a qualifying tax exempt nonprofit organization, or the Palisades Interstate Park Commission for recreation and conservation purposes shall not be subject to roll-back taxes. As used in this section, "acquired," "local government unit," "qualifying tax exempt nonprofit organization," and "recreation and conservation purposes" mean the same as those terms are defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

In determining the amounts of the roll-back taxes chargeable on land which has undergone a change in use, the assessor shall for each of the roll-back tax years involved, ascertain:

(a) The full and fair value of such land under the valuation standard applicable to other land in the taxing district;

(b) The amount of the land assessment for the particular tax year by multiplying such full and fair value by the county percentage level, as determined by the county board of taxation in accordance with section 3 of P.L.1960, c.51 (C.54:4-2.27);

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (b) hereof; and

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under (c) hereof by the general property tax rate of the taxing district applicable for that tax year.

3. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 313

AN ACT concerning rental properties and supplementing chapter 8 of Title 46 of the Revised Statutes.

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

C.46:8-50 Notification to tenants if property is in flood zone.

1. Every landlord shall notify each of the landlord's tenants upon the event that the rental property which is the subject of a lease has been

determined to be located in a flood zone or area. Each new tenant shall be notified prior to the time that occupancy of the rental unit is assumed. For the purposes of this section, "landlord" means any person who rents or leases, for a term of at least one month, commercial space or residential dwelling units other than dwelling units in a premises containing not more than two such units, or in an owner-occupied premises of not more than three dwelling units, or in hotels, motels, or other guest houses serving transient or seasonal guests.

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 314

AN ACT concerning application fees for certain construction permit applications and amending P.L.1975, c.232.

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

1. Section 5 of P.L.1975, c.232 (C.13:1D-33) is amended to read as follows:

C.13:1D-33 Rules, regulations; "Environmental Services Fund;" fees.

5. a. The commissioner shall adopt, amend and repeal rules and regulations to implement the provisions of this act. The commissioner shall in accordance with a fee schedule adopted as a rule or regulation establish and charge reasonable fees for the filing and review of any application for a construction permit. The fees imposed hereunder, except as may otherwise be provided by law, shall be deposited in a fund to be known as the "Environmental Services Fund," kept separate and apart from all other State receipts and appropriated only as provided herein. There shall be appropriated annually to the department revenue from such fund sufficient to defray in full the costs incurred in the processing and review of applications for construction permits.

b. In establishing the fee schedule required pursuant to subsection a. of this section, the commissioner shall not establish a fee in excess of \$30,000 for the filing and review of any application for a construction permit pursuant to R.S.12:5-3 or the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), except that a fee in excess of \$30,000

may be charged if the department documents actual costs in excess of \$30,000 for the review and processing of an application and the estimated cost of determining compliance with the conditions of the permit.

2. This act shall take effect immediately and shall apply to all permit applications received by the department after the effective date of this act.

Approved January 3, 2002.

CHAPTER 315

AN ACT concerning appraisals of land to be acquired for recreation and conservation purposes or farmland preservation purposes, and amending P.L.1999, c.152.

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

1. Section 26 of P.L.1999, c.152 (C.13:8C-26) is amended to read as follows:

C.13:8C-26 Allocation of funds appropriated; conditions.

26. a. Moneys appropriated from the Garden State Green Acres Preservation Trust Fund to the Department of Environmental Protection shall be used by the department to:

(1) Pay the cost of acquisition and development of lands by the State for recreation and conservation purposes;

(2) Provide grants and loans to assist local government units to pay the cost of acquisition and development of lands for recreation and conservation purposes; and

(3) Provide grants to assist qualifying tax exempt nonprofit organizations to pay the cost of acquisition and development of lands for recreation and conservation purposes.

b. The expenditure and allocation of constitutionally dedicated moneys for recreation and conservation purposes shall reflect the geographic diversity of the State to the maximum extent practicable and feasible.

c. (1) Notwithstanding the provisions of section 5 of P.L.1985, c.310 (C.13:18A-34) or this act, or any rule or regulation adopted pursuant thereto, to the contrary, the value of a pinelands development credit, allocated to a parcel pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.) and the pinelands comprehensive management plan adopted pursuant thereto, shall be made

utilizing a value to be determined by either appraisal, regional averaging based upon appraisal data, or a formula supported by appraisal data. The appraisal and appraisal data shall consider as appropriate: land values in the pinelands regional growth areas; land values in counties, municipalities, and other areas reasonably contiguous to, but outside of, the pinelands area; and other relevant factors as may be necessary to maintain the environmental, ecological, and agricultural qualities of the pinelands area.

(2) No pinelands development credit allocated to a parcel of land pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.) and the pinelands comprehensive management plan adopted pursuant thereto that is acquired or obtained in connection with the acquisition of the parcel for recreation and conservation purposes by the State, a local government unit, or a qualifying tax exempt nonprofit organization using constitutionally dedicated moneys in whole or in part may be conveyed in any manner. All such pinelands development credits shall be retired permanently.

d. (1) (a) For State fiscal years 2000 through 2004 only, when the department, a local government unit, or a qualifying tax exempt nonprofit organization seeks to acquire lands for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part or Green Acres bond act moneys in whole or in part, it shall conduct or cause to be conducted an appraisal or appraisals of the value of the lands that shall be made using the land use zoning of the lands (i) in effect at the time of proposed acquisition, and (ii) in effect on November 3, 1998 as if that land use zoning is still in effect at the time of proposed acquisition. The higher of those two values shall be utilized by the department, a local government unit, or a qualifying tax exempt nonprofit organization as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner shall be provided with both values determined pursuant to this subparagraph.

A landowner may waive any of the requirements of this paragraph and may agree to sell the lands for less than the values determined pursuant to this paragraph.

(b) After the date of enactment of P.L.2001, c.315 and through June 30, 2004, in determining the two values required pursuant to subparagraph (a) of this paragraph, the appraisal shall be made using not only the land use zoning but also the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and associated requirements and standards applicable to the lands subject to the appraisal (i) in effect at the time of proposed acquisition, and (ii) in effect on November 3, 1998 as if those rules and regulations and associated requirements and standards are still in effect at the time of proposed acquisition.

(2) The requirements of this subsection shall be in addition to any other requirements of law, rule, or regulation not inconsistent therewith.

(3) This subsection shall not:

(a) apply if the land use zoning of the lands at the time of proposed acquisition, and the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and associated requirements and standards applicable to the lands at the time of proposed acquisition, have not changed since November 3, 1998;

(b) apply in the case of lands to be acquired with federal moneys in whole or in part;

(c) apply in the case of lands to be acquired in accordance with subsection c. of this section;

(d) apply to projects funded using constitutionally dedicated moneys appropriated pursuant to the annual appropriations act for State fiscal year 2000 (P.L.1999, c.138); or

(e) alter any requirements to disclose information to a landowner pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

e. Moneys appropriated from the fund may be used to match grants, contributions, donations, or reimbursements from federal aid programs or from other public or private sources established for the same or similar purposes as the fund.

f. Moneys appropriated from the fund shall not be used by local government units or qualifying tax exempt nonprofit organizations to acquire lands that are already permanently preserved for recreation and conservation purposes, as determined by the department.

g. Whenever lands are donated to the State by a public utility, as defined pursuant to Title 48 of the Revised Statutes, for recreation and conservation purposes, the commissioner may make and keep the lands accessible to the public, unless the commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith.

h. Whenever the State acquires land for recreation and conservation purposes, the agency in the Department of Environmental Protection responsible for administering the land shall, within six months after the date of acquisition, inspect the land for the presence of any buildings or structures thereon which are or may be historic properties and, within 60 days after completion of the inspection, provide to the New Jersey Historic Preservation Office in the department (1) a written notice of its findings, and (2) for any buildings or structures which are or may be historic properties discovered on the land, a request for determination of potential eligibility for inclusion of the historic building or structure in the New Jersey Register of

Historic Places. Whenever such a building or structure is discovered, a copy of the written notice provided to the New Jersey Historic Preservation Office shall also be sent to the New Jersey Historic Trust and to the county historical commission or advisory committee, the county historical society, the local historic preservation commission or advisory committee, and the local historical society if any of those entities exist in the county or municipality wherein the land is located.

i. (1) Commencing July 1, 2004 and until five years after the date of enactment of P.L.2001, c.315, when the department, a local government unit, or a qualifying tax exempt nonprofit organization seeks to acquire lands for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part or Green Acres bond act moneys in whole or in part, it shall conduct or cause to be conducted an appraisal or appraisals of the value of the lands that shall be made using the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and associated requirements and standards applicable to the lands subject to the appraisal (a) in effect at the time of proposed acquisition, and (b) in effect on November 3, 1998 as if those rules and regulations and associated requirements and standards are still in effect at the time of proposed acquisition. The higher of those two values shall be utilized by the department, a local government unit, or a qualifying tax exempt nonprofit organization as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner shall be provided with both values determined pursuant to this paragraph. A landowner may waive any of the requirements of this paragraph and may agree to sell the lands for less than the values determined pursuant to this paragraph.

(2) The requirements of this subsection shall be in addition to any other requirements of law, rule, or regulation not inconsistent therewith.

(3) This subsection shall not:

(a) apply if the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and associated requirements and standards applicable to the lands at the time of proposed acquisition have not changed since November 3, 1998;

(b) apply in the case of lands to be acquired with federal moneys in whole or in part;

(c) apply in the case of lands to be acquired in accordance with subsection c. of this section; or

(d) alter any requirements to disclose information to a landowner pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

2. Section 38 of P.L.1999, c.152 (C.13:8C-38) is amended to read as follows:

C.13:8C-38 Acquisitions, grants with respect to farmland preservation.

38. a. All acquisitions or grants made pursuant to section 37 of this act shall be made with respect to farmland devoted to farmland preservation under programs established by law.

b. The expenditure and allocation of constitutionally dedicated moneys for farmland preservation purposes shall reflect the geographic diversity of the State to the maximum extent practicable and feasible.

c. The committee shall implement the provisions of section 37 of this act in accordance with the procedures and criteria established pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.) except as provided otherwise by this act.

d. The committee shall adopt the same or a substantially similar method for determining, for the purposes of this act, the committee's share of the cost of a development easement on farmland to be acquired by a local government as that which is being used by the committee on the date of enactment of this act for prior farmland preservation funding programs.

e. Notwithstanding the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31) or this act, or any rule or regulation adopted pursuant thereto, to the contrary, whenever the value of a development easement on farmland to be acquired using constitutionally dedicated moneys in whole or in part is determined based upon the value of any pinelands development credits allocated to the parcel pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.) and the pinelands comprehensive management plan adopted pursuant thereto, the committee shall determine the value of the development easement by:

(1) conducting a sufficient number of fair market value appraisals as it deems appropriate to determine the value for farmland preservation purposes of the pinelands development credits;

(2) considering development easement values in counties, municipalities, and other areas (a) reasonably contiguous to, but outside of, the pinelands area, which in the sole opinion of the committee constitute reasonable development easement values in the pinelands area for the purposes of this subsection, and (b) in the pinelands area where pinelands development credits are or may be utilized, which in the sole opinion of the committee constitute reasonable development easement values in the pinelands area for the purposes of this subsection;

(3) considering land values in the pinelands regional growth areas;

(4) considering the importance of preserving agricultural lands in the pinelands area; and

(5) considering such other relevant factors as may be necessary to increase participation in the farmland preservation program by owners of agricultural lands located in the pinelands area.

f. No pinelands development credit that is acquired or obtained in connection with the acquisition of a development easement on farmland or fee simple title to farmland by the State, a local government unit, or a qualifying tax exempt nonprofit organization using constitutionally dedicated moneys in whole or in part may be conveyed in any manner. All such pinelands development credits shall be retired permanently.

g. (1) (a) For State fiscal years 2000 through 2004 only, when the committee, a local government unit, or a qualifying tax exempt nonprofit organization seeks to acquire a development easement on farmland or the fee simple title to farmland for farmland preservation purposes using constitutionally dedicated moneys in whole or in part, it shall conduct or cause to be conducted an appraisal or appraisals of the value of the lands that shall be made using the land use zoning of the lands (i) in effect at the time of proposed acquisition, and (ii) in effect on November 3, 1998 as if that land use zoning is still in effect at the time of proposed acquisition. The higher of those two values shall be utilized by the committee, a local government unit, or a qualifying tax exempt nonprofit organization as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner shall be provided with both values determined pursuant to this subparagraph.

A landowner may waive any of the requirements of this paragraph and may agree to sell the lands for less than the values determined pursuant to this paragraph.

(b) After the date of enactment of P.L.2001, c.315 and through June 30, 2004, in determining the two values required pursuant to subparagraph (a) of this paragraph, the appraisal shall be made using not only the land use zoning but also the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and associated requirements and standards applicable to the lands subject to the appraisal (i) in effect at the time of proposed acquisition, and (ii) in effect on November 3, 1998 as if those rules and regulations and associated requirements and standards are still in effect at the time of proposed acquisition.

(2) The requirements of this subsection shall be in addition to any other requirements of law, rule, or regulation not inconsistent therewith.

(3) This subsection shall not:

(a) apply if the land use zoning of the lands at the time of proposed acquisition, and the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and

associated requirements and standards applicable to the lands at the time of proposed acquisition, have not changed since November 3, 1998;

(b) apply in the case of lands to be acquired with federal moneys in whole or in part;

(c) apply in the case of lands to be acquired in accordance with subsection e. of this section;

(d) apply to projects funded using constitutionally dedicated moneys appropriated pursuant to the annual appropriations act for State fiscal year 2000 (P.L.1999, c.138); or

(e) alter any requirements to disclose information to a landowner pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

h. Any farmland for which a development easement or fee simple title has been acquired pursuant to section 37 of this act shall be entitled to the benefits conferred by the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et al.) and the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.).

i. (1) Commencing July 1, 2004 and until five years after the date of enactment of P.L.2001, c.315, when the committee, a local government unit, or a qualifying tax exempt nonprofit organization seeks to acquire a development easement on farmland or the fee simple title to farmland for farmland preservation purposes using constitutionally dedicated moneys in whole or in part, it shall conduct or cause to be conducted an appraisal or appraisals of the value of the lands that shall be made using the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and associated requirements and standards applicable to the lands subject to the appraisal (a) in effect at the time of proposed acquisition, and (b) in effect on November 3, 1998 as if those rules and regulations and associated requirements and standards are still in effect at the time of proposed acquisition. The higher of those two values shall be utilized by the committee, a local government unit, or a qualifying tax exempt nonprofit organization as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner shall be provided with both values determined pursuant to this paragraph. A landowner may waive any of the requirements of this paragraph and may agree to sell the lands for less than the values determined pursuant to this paragraph.

(2) The requirements of this subsection shall be in addition to any other requirements of law, rule, or regulation not inconsistent therewith.

(3) This subsection shall not:

(a) apply if the Department of Environmental Protection wastewater, water quality and watershed management rules and regulations and

associated requirements and standards applicable to the lands at the time of proposed acquisition have not changed since November 3, 1998;

(b) apply in the case of lands to be acquired with federal moneys in whole or in part;

(c) apply in the case of lands to be acquired in accordance with subsection e. of this section; or

(d) alter any requirements to disclose information to a landowner pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

3. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 316

AN ACT concerning health care benefits in retirement for certain members of the State Police Retirement System of New Jersey and amending P.L.1965, c.89.

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

1. Section 8 of P.L.1965, c.89 (C.53:5A-8) is amended to read as follows:

C.53:5A-8 Retirement for age and service; benefits.

8. a. The Legislature finds and declares that the public health, safety and welfare require the ongoing health and fitness of all members of the New Jersey State Police so that they may safely and efficiently protect the public. The Legislature further finds and declares that such continued health and fitness cannot be determined except with reference to age, and therefore finds and concludes that retirement of all members of the State Police at age 55, except as provided for in subsection c. of this section, shall constitute a bona fide occupational qualification which is reasonably necessary to the normal operation of the State Police, which qualification the Legislature hereby promulgates and establishes.

b. Any member of the retirement system may retire on a service retirement allowance upon the completion of at least 20 years of creditable service as a State policeman, which includes the creditable service of those members appointed to the Division of State Police under section 3 of

P.L.1983, c.403 (C.39:2-9.3) and the creditable service of those members appointed to the Division of State Police under section 1 of P.L.1997, c.19 (C.53:1-8.2). Upon the filing of a written and duly executed application with the retirement system, setting forth at what time, not less than one month subsequent to the filing thereof, he desires to be retired, any such member retiring for service shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his aggregate contributions; and

(2) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 50% of his final compensation.

c. Except for the Superintendent of State Police, any member of the retirement system, including a member appointed to the State Police under section 3 of P.L.1983, c.403 (C.39:2-9.3) and a member appointed to the State Police under section 1 of P.L.1997, c.19 (C.53:1-8.2), who has attained the age of 55 years, shall be retired forthwith on the first day of the next calendar month following the effective date of this 1985 amendatory act. Any member of the retirement system so retired shall receive a service retirement allowance pursuant to this section or section 27 of P.L.1965, c.89 (C.53:5A-27), as appropriate.

d. Any member of the retirement system who is required to retire pursuant to subsection c. of this section and who has more than 20 but fewer than 25 years of creditable service at the time of retirement shall be entitled to continued health benefits coverage during retirement as provided in the "New Jersey State Health Benefits Program Act," P.L.1961, c.49 (C.52:14-17.25 et seq.). Notwithstanding the provisions of section 8 of P.L.1961, c.49 (C.52:14-17.32), the State shall pay the premium or periodic charge for the benefits provided under this subsection to a member retiring under subsection c. of this section with fewer than 25 years of service credited in the retirement system, and the member's dependents covered under the program, but not including survivors.

e. Any member of the retirement system as of the effective date of P.L.1985, c.175 who is required to retire pursuant to subsection c. of this section shall be entitled to the retirement allowance provided for by subsection b. of this section, notwithstanding that the member shall have fewer than 20 years' creditable service.

f. Any member of the retirement system as of the effective date of P.L.1985, c.175 who is required to retire pursuant to subsection c. of this section and who has more than 20 but less than 25 years of creditable service at the time of retirement shall be entitled to the retirement allowance provided for by subsection b. of this section plus 3% of his final compensa-

tion multiplied by the number of years of creditable service over 20 but not over 25.

g. Upon the receipt of proper proofs of the death of a member who has retired on a service retirement allowance, there shall be paid to the member's beneficiary an amount equal to one-half of the final compensation received by the member.

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 317

AN ACT concerning the rank of an assistant adjutant general in the Department of Military and Veterans' Affairs and amending P.L.1984, c.181.

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

1. Section 8 of P.L.1984, c.181 (C.38A:3-5.1) is amended to read as follows:

C.38A:3-5.1 Assistant adjutant generals; rank.

8. The Governor may appoint, with the advice and consent of the Senate, an assistant adjutant general for the New Jersey Army National Guard, and an assistant adjutant general for the New Jersey Air National Guard, respectively, who shall serve at the pleasure of the Governor. The assistant adjutant general for the New Jersey Air National Guard may have the rank of major general and the assistant adjutant general for the New Jersey Army National Guard may have the rank of brigadier general during the term of office and each shall serve on the staff of the Adjutant General.

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 318

AN ACT concerning a pension benefit for certain survivors of certain members of the Police and Firemen's Retirement System of New Jersey.

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

1. The benefits payable upon receipt of proper proof of death of a member of the Police and Firemen's Retirement System in active service under section 9 of P.L.1944, c.255 (C.43:16A-9), as increased by P.L.1999, c.428, shall be paid to a widow or widower or child or parent, as appropriate, of a member who had 10 or more years of creditable service in the retirement system, who died in active service on or after June 1, 1995 and before January 1, 1998, and whose widow or widower had, on May 1, 2001, an appeal of a denial of an accidental death benefit pursuant to section 10 of P.L.1944, c.255 (C.43:16A-10) pending before the board of trustees of the retirement system, if the appeal before the board has been withdrawn or denied and an eligible beneficiary applies to the Division of Pensions and Benefits within 90 days following the effective date of P.L.2001, c.318 and subject to the return to the system of the member's aggregate contributions received by the beneficiary. The State shall be liable for all costs to the retirement system attributable to this section. The benefits provided in this section shall be paid prospectively only, in the manner provided by the division for the payment of such benefits generally.

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 319

AN ACT concerning water supply management, and amending P.L.1981, c.262.

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

1. Section 7 of P.L.1981, c.262 (C.58:1A-7) is amended to read as follows:

C.58:1A-7 Diversion of water, permit, renewal; criteria for critical water supply concerns.

7. a. A person shall not divert more than 100,000 gallons per day of any waters of the State or construct any building or structure which may require a diversion of water unless the person obtains a diversion permit or water usage certification, as appropriate, pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6).

b. Every diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) shall be renewed by the department upon the expiration thereof, with any conditions deemed appropriate by the department, for the same quantity of water, except that the department may, after notice and public hearing, limit that quantity to the amount currently diverted, subject to contract, or reasonably required for a demonstrated future need. In designated areas of critical water supply concern, the department may, after notice and public hearing, modify the conditions of an existing diversion permit or water usage certification in order to (1) limit or reduce the quantity of water which lawfully may be diverted to the safe or dependable yield of the resource; (2) transfer the point of diversion; or (3) require a permittee to utilize alternate sources of water, upon a determination that the existing diversion or continued use of the same source in excess of the safe and dependable yield, as the case may be, adversely impacts or threatens to adversely impact the water resources of the State.

c. For any surface water or ground water source or area of the State that the department determines to be approaching conditions that may require the commissioner to designate that region as an area of critical water supply concern, and that meets the criteria established pursuant to subsection d. of this section, the department may, after notice and opportunity for public hearing, issue a temporary diversion permit which may be modified or terminated to any person seeking a new or modified permit to divert any waters of the State or to construct any building or structure or commence any activity which may require a diversion permit or water usage certification, as appropriate, pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6).

The duration of any temporary permit issued by the department pursuant to this subsection shall be for no longer than five years. The department may alter the conditions or amount of water allowed to be diverted, terminate the permit or renew the temporary permit for a subsequent term.

For the duration of the temporary permit issued by the department pursuant to this subsection, the permittee shall actively seek an alternative for the permittee's long-term water supply needs which, in the department's opinion, may be viable for the permittee to replace the previously allowable diversion amount.

Whenever the department terminates or modifies the conditions of a temporary permit, the department shall provide adequate advance notice to the permittee of the department's intentions and the rationale therefor. The department's rationale may include, but need not be limited to, an explanation of the status of watershed and water supply planning and infrastructure conditions and improvement initiatives for surface water or ground water

sources or areas and alternatives which, in the department's opinion, may be viable for the permittee to replace the previously allowable diversion amount. These alternatives may include, but need not be limited to, reuse of treated wastewater effluent or other alternatives approved by the department.

Nothing herein shall alter the authority of the department to administer and enforce the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) or any rules, regulations and orders adopted, issued or effective thereunder pertaining to designated areas of critical water supply concern.

Any procedures or requirements necessary to implement the provisions of this subsection shall be contained in rules and regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. The department may issue a temporary permit pursuant to subsection c. of this section only when the proposed diversion, construction or activity is intended to serve the long-term water supply needs of the permittee and water users of Salem or Gloucester counties.

2. This act shall take effect immediately.

Approved January 3, 2002.

CHAPTER 320

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, 2001 and regulating the disbursement thereof," approved June 30, 2000 (P.L.2000, c.53).

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.2000, c.53, there is appropriated out of the General Fund the following sum for the purpose specified:

22 DEPARTMENT OF COMMUNITY AFFAIRS
50 Economic Planning, Development and Security
55 Social Services Programs
GRANTS-IN-AID

05-8050 Community Resources: \$40,000

Grants-in-Aid:

05 Grant to East Greenwich Township for veterans' memorial \$40,000

2. This act shall take effect immediately.

Approved January 4, 2002.

CHAPTER 321

AN ACT concerning the reuse of treated effluent in industrial facilities, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.).

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

C.54:10A-5.31 Tax credit for purchase of effluent treatment, conveyance equipment.

1. a. (1) A taxpayer who in a privilege period purchases treatment equipment or conveyance equipment for use exclusively within this State, shall be allowed a credit as provided herein against the tax imposed for that privilege period pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 50% of the cost of the treatment equipment or conveyance equipment less the amount of any loan received pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96) and excluding the amount of any sales and use tax paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided that the Commissioner of the Department of Environmental Protection has issued a determination under subsection b. of this section that the operation of the system of equipment and the reuse of wastewater effluent that results therefrom are or will be beneficial to the environment. The amount of the credit claimed for the privilege period in which the purchase of treatment equipment or conveyance equipment is made, and the amount of credit claimed therefor in each privilege period thereafter, shall not exceed 20% of the amount of the total credit allowable, shall not, together with any other credits allowed by law, exceed 50% of the tax liability which would be otherwise due, and shall not reduce the amount of tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An unused credit amount may be carried forward, if necessary, for use in future privilege periods. Notwithstanding any other provision of law, the order of priority in which the credit allowed under this section and

any other credits allowed by law may be taken shall be as prescribed by the director.

A taxpayer who, in a privilege period, purchased treatment equipment or conveyance equipment, but who did not receive approval of an application for determination pursuant to subsection b. of this section before filing a return for that privilege period, may, in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., and subject to the provisions of this section, file with the director a claim for the credit for that privilege period and any subsequent privilege period, as appropriate.

For the purposes of this section, "treatment equipment" means any equipment that is used exclusively to treat effluent from a primary wastewater treatment facility, which effluent would otherwise have been discharged into the waters of the State, for purposes of reuse in an industrial process thereafter, and "conveyance equipment" means any equipment that is used exclusively to transport that effluent to the facility in which the treatment equipment has been or is to be installed and to transport the product of that further treatment to the site of that reuse.

(2) If a person who purchases treatment equipment or conveyance equipment for which the Commissioner of the Department of Environmental Protection has issued a determination of environmentally beneficial operation pursuant to subsection b. of this section is a partnership, limited liability company, or other person classified as a partnership for federal tax purposes and not subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a portion of the amount of the credit otherwise allowed to the purchaser pursuant to paragraph (1) of this subsection shall be allowed to each owner of that purchaser that is subject to the tax in proportion to the owner's share of the income of the purchaser. The purchaser shall be treated as the taxpayer for the purpose of administering the provisions of this section.

b. In order to qualify for the tax credit pursuant to subsection a. of this section, the taxpayer shall apply for a determination from the Commissioner of the Department of Environmental Protection that the equipment with respect to which the credit is sought (1) qualifies as treatment equipment or conveyance equipment as defined in subsection a. of this section, and (2) is or will be in its operation, considered in conjunction with the reuse of the further treated wastewater effluent that results from that operation, beneficial to the environment. The application shall be submitted in writing in a form as the commissioner shall prescribe and shall specifically

include; the date or anticipated date of purchase of the equipment, a physical and functional description of the equipment, the cost, the name and address or location of each primary wastewater treatment facility from which effluent is or is to be received for further treatment, the name and address or location of each facility to which the effluent is or is to be conveyed after the further treatment for reuse, the nature of the reuse, the location of any site at which the wastewater that has been or is to be further treated is being or is to be discharged either prior to or after reuse, the volume of such wastewater that is or is to be reused, the portion of that volume that is or is to be consumed in that reuse and the portion thereof that is or is to be discharged thereafter, and the taxpayer's explanation of how the operation of the system and the reuse of the wastewater effluent that has been further treated are or will be beneficial to the environment. The application shall also include the taxpayer's affidavit that, to the best of the taxpayer's knowledge, the equipment has not previously qualified for a credit pursuant to this section either for the taxpayer or other owner or for a previous owner.

Upon approval of the application, the Commissioner of the Department of Environmental Protection shall submit a copy of the determination of equipment qualification and environmentally beneficial operation to the taxpayer and the Director of the Division of Taxation. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the determination and the taxpayer's affidavit that the treatment equipment or conveyance equipment is or will be used exclusively in New Jersey. Any credit shall be initially allowed for the privilege period in which the equipment is purchased, and any unused portion thereof may be carried forward into subsequent privilege periods as provided in subsection a. of this section.

The Commissioner of the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt rules and regulations establishing technical and administrative requirements for the qualification of treatment equipment and conveyance equipment, and for the determination that the operation of a system of such equipment and the reuse of wastewater effluent that has been treated thereby are beneficial to the environment, for the purpose of establishing a taxpayer's eligibility for a credit pursuant to this section. In the development and adoption of the rules and regulations prescribed under this act and of any procedure for making application for a credit under subsection a. of this section, the commissioner, in consultation with

the director, shall to the greatest extent possible ensure that they are consolidated or consistent with any corresponding rules, regulations, and procedures established under P.L. , c. (C.) (now pending before the Legislature as Senate Bill No. 1210 (1R) and Assembly Bill No. 2695 of 2000) and P.L.2001, c.322.

c. No amount of cost included in calculation of the credit allowed under this section shall be included in the costs for calculation of any other credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

d. On or before January 31 of each year, the Commissioner of the Department of Environmental Protection shall submit a report to the Governor, the State Treasurer, and the Legislature setting forth the number of taxpayer applications under subsection b. of this section that were approved during the preceding calendar year and the cost of each type of equipment which has been determined to qualify for the credit.

C.54:10A-5.32 Temporary regulations for effluent treatment tax credit.

2. Notwithstanding the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of the Department of Environmental Protection may, immediately upon filing with the Office of Administrative Law, adopt such temporary regulations as the commissioner deems necessary to implement the provisions of section 1 of P.L.2001, c.321 (C.54:10A-5.31), which regulations shall be effective for a period not to exceed 270 days from the date of the filing, but in no case after one year from the effective date of that P.L.2001, c.321. The regulations may thereafter be amended, adopted or readopted by the commissioner as the commissioner deems necessary in accordance with the requirements of P.L.1968, c.410.

3. This act shall take effect immediately and apply to purchases made in privilege periods beginning on or after July 1 next following enactment

Approved January 4, 2002.

CHAPTER 322

AN ACT concerning certain equipment, amending P.L.1981, c.546.

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

1. Section 1 of P.L.1981, c.546 (C.54:32B-8.36) is amended to read as follows:

C.54:32B-8.36 Recycling, effluent treatment, conveyance equipment; exemption from sales and use tax.

1. a. Receipts from the sales of recycling equipment are exempt from the tax imposed under the "Sales and Use Tax Act." For purposes of this subsection "recycling equipment" means any equipment which is used exclusively to sort and prepare solid waste for recycling or in the recycling of solid waste. "Recycling equipment" does not include conventional motor vehicles, or any equipment used in a process after the first marketable product is produced, or in the case of recycling iron or steel, any equipment used to reduce the waste to molten state and in any process thereafter.

b. (1) Receipts from the sales of treatment equipment or conveyance equipment are exempt from the tax imposed under the "Sales and Use Tax Act," provided that the Commissioner of the Department of Environmental Protection has determined that the operation of the system in which the equipment is being or is to be used, and the reuse of wastewater effluent that results from that operation, are or will be beneficial to the environment. For purposes of this subsection, "treatment equipment" means any equipment that is used exclusively to treat effluent from a primary wastewater treatment facility, which effluent would otherwise have been discharged into the waters of the State, for purposes of reuse in an industrial process thereafter, and "conveyance equipment" means any equipment that is used exclusively to transport that effluent to the facility in which the treatment equipment has been or is to be installed and to transport the product of that further treatment to the site of that reuse.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the vendor shall charge and collect the tax from the purchaser on such sales at the rate then in effect, and the tax shall be refunded to the purchaser by the filing of a claim, within three years of the date of purchase, with the New Jersey Division of Taxation for a refund of sales or use tax paid. Proof of claim for refund shall be demonstrated by a copy of a determination of environmental benefit issued to the purchaser by the Commissioner of the Department of Environmental Protection pursuant to section 1 of P.L.2001, c.321 (C.54:10A-5.31), and by any additional information as the director may require, including but not limited to proof of tax paid.

2. This act shall take effect immediately and apply to sales made after enactment

Approved January 4, 2002.

CHAPTER 323

AN ACT concerning wine promotion and amending P.L.1985, c.233.

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

1. Section 2 of P.L.1985, c.233 (C.4:10-76) is amended to read as follows:

C.4:10-76 "New Jersey Wine Promotion Account"; establishment, funding.

2. a. There is established in the Department of Agriculture the "New Jersey Wine Promotion Account," hereinafter referred to as the "account." All monies received in this account shall be expended by the Secretary of Agriculture for research and development concerning the viticultural and wine-making processes in the State and for the promotion of New Jersey wine, consistent with the recommendations of the New Jersey Wine Industry Advisory Council created pursuant to section 3 of P.L.1985, c.233 (C.4:10-77).

b. The account shall be credited annually, in an appropriation by law, with an amount equal to \$0.47 per gallon on all sales of wines, vermouth and sparkling wines sold by plenary winery and farm winery licensees licensed pursuant to R.S.33:1-10.

c. The account shall also be credited with any monies made available to it from the General Fund or any non-State public or private source.

d. The secretary shall include with the annual budget request for the department a request for funds sufficient to carry out the purposes and intent of P.L.1985, c.233 (C.4:10-76 et seq.)

2. This act shall take effect immediately.

Approved January 4, 2002.

CHAPTER 324

AN ACT concerning the transportation of nonpublic school pupils in certain regional and consolidated school districts and amending P.L.1999, c.350.

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

1. Section 1 of P.L.1999, c.350 (C.18A:39-1.6) is amended to read as follows:

C.18A:39-1.6 Transportation of nonpublic school students, remote, certain.

1. As used in this section, "regional district" means a regional school district composed of only two constituent municipalities or a consolidated school district composed of only two municipalities.

Notwithstanding any provision of N.J.S.18A:39-1 to the contrary, if a school district provides transportation to and from school to a school pupil who resides remote from school and attends a nonpublic school located within the State not more than 20 miles from the residence of the pupil, or in the case of a regional district provides transportation or an in-lieu-of-payment to such pupil, the school district or regional district shall provide transportation, when seats are available on existing routes, or an in-lieu-of payment to all nonpublic school pupils who reside within the municipality of that pupil or in the case of a regional district reside within the district, attend that school, and reside more than 20 miles from that school. The school district may require all nonpublic school pupils in the municipality or regional district to use the bus stops which serve the pupils whose residences are not more than 20 miles from the nonpublic school. Any cost incurred by a school district or a regional district in providing transportation or an in-lieu-of payment to a pupil who is eligible for the transportation or an in-lieu-of payment under the provisions of this section shall not exceed the maximum cost per pupil established pursuant to section 2 of P.L.1981, c.57 (C.18A:39-1a), and shall be paid by the State.

2. This act shall take effect immediately and shall first apply to the 2000-2001 school year.

Approved January 4, 2002.

CHAPTER 325

AN ACT concerning certain police, fire and other emergency personnel and amending R.S.34:15-43 and P.L.1999, c.251.

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

1. R.S.34:15-43 is amended to read as follows:

Compensation for injury in line of duty.

34:15-43. Every officer, appointed or elected, and every employee of the State, county, municipality or any board or commission, or any other governing body, including boards of education, and governing bodies of service districts, individuals who are under the general supervision of the Palisades Interstate Park Commission and who work in that part of the Palisades Interstate Park which is located in this State, and also each and every member of a volunteer fire company doing public fire duty and also each and every active volunteer, first aid or rescue squad worker, including each and every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, doing public first aid or rescue duty under the control or supervision of any commission, council, or any other governing body of any municipality, any board of fire commissioners of such municipality or of any fire district within the State, or of the board of managers of any State institution, every county fire marshal and assistant county fire marshal, every special, reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, every emergency management volunteer doing emergency management service for the State and any person doing volunteer work for the Division of Parks and Forestry, the Division of Fish and Wildlife, or the New Jersey Natural Lands Trust, as authorized by the Commissioner of Environmental Protection, or for the New Jersey Historic Trust, who may be injured in line of duty shall be compensated under and by virtue of the provisions of this article and article 2 of this chapter (R.S.34:15-7 et seq.). No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability; provided, however, that such employee, despite retirement, shall, nevertheless, be entitled to the medical,

surgical and other treatment and hospital services as set forth in R.S.34:15-15.

Benefits available under this section to emergency management volunteers and volunteers participating in activities of the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under R.S.34:15-1 et seq.

As used in this section, the terms "doing public fire duty" and "who may be injured in line of duty," as applied to members of volunteer fire companies, county fire marshals or assistant county fire marshals, and the term "doing public first aid or rescue duty," as applied to active volunteer first aid or rescue squad workers, shall be deemed to include participation in any authorized construction, installation, alteration, maintenance or repair work upon the premises, apparatus or other equipment owned or used by the fire company or the first aid or rescue squad, participation in any State, county, municipal or regional search and rescue task force or team, participation in any authorized public drill, showing, exhibition, fund raising activity or parade, and to include also the rendering of assistance in case of fire and, when authorized, in connection with other events affecting the public health or safety, in any political subdivision or territory of another state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

Also, as used in this section, "doing public police duty" and "who may be injured in line of duty" as applied to special, reserve or auxiliary policemen, shall be deemed to include participation in any authorized public drill, showing, exhibition or parade, and to include also the rendering of assistance in connection with other events affecting the public health or safety in the municipality, and also, when authorized, in connection with any such events in any political subdivision or territory of this or any other state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

As used in this section, the terms "doing emergency management service" and "who may be injured in the line of duty" as applied to emergency management volunteers mean participation in any

activities authorized pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), including participation in any State, county, municipal or regional search and rescue task force or team, except that the terms shall not include activities engaged in by a member of an emergency management agency of the United States Government or of another state, whether pursuant to a mutual aid compact or otherwise.

Every member of a volunteer fire company shall be deemed to be doing public fire duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district or board of managers of any State institution within the meaning of this section, if such control or supervision is provided for by statute or by rule or regulation of the board of managers or the superintendent of such State institution, or if the fire company of which he is a member receives contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district or if such fire company has been or hereafter shall be designated by ordinance as the fire department of the municipality.

Every active volunteer, first aid or rescue squad worker, including every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, shall be deemed to be doing public first aid or rescue duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district within the meaning of this section if such control or supervision is provided for by statute, or if the first aid or rescue squad of which he is a member or authorized worker receives or is eligible to receive contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district, or if such first aid or rescue squad has been or hereafter shall be designated by ordinance as the first aid or rescue squad of the municipality.

As used in this section and in R.S.34:15-74, the term "authorized worker" shall mean and include, in addition to an active volunteer fireman and an active volunteer first aid or rescue squad worker, any person performing any public fire duty or public first aid or rescue squad duty, as the same are defined in this section, at the request of the chief or acting chief of a fire company or the president or person in charge of a first aid or rescue squad for the time being.

A member of a volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency

management volunteer serving a volunteer organization duly created and under the control or supervision of any commission, council or any other governing body of any municipality, any board of fire commissioners of that municipality or of any fire district within the State, or of the board of managers of any State institution, who participated in a search and rescue task force or team in response to the terrorist attacks of September 11, 2001 without the authorization of that volunteer organization's governing body and who suffered injury or death as a result of participation in that search and rescue task force or team shall be deemed an employee of this State for the purpose of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of the duties of the volunteer company or squad of which he was a member.

Whenever a member of a volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer serving a volunteer organization duly created and under the control or supervision of any commission, council or any other governing body of any municipality, any board of fire commissioners of that municipality or of any fire district within the State, or of the board of managers of any State institution, participates in a national, multi-state, State, municipal or regional search and rescue task force or team without the authorization of that volunteer organization's governing body but pursuant to a Declaration of Emergency by the Governor of the State of New Jersey specifically authorizing volunteers to respond immediately to the emergency without requiring the authorization of the volunteer company or squad, and the member of the volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer suffers injury or death as a result of participation in that search and rescue task force or team, he shall be deemed an employee of this State for the purpose of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of the duties of the volunteer company or squad of which he was a member.

Nothing herein contained shall be construed as affecting or changing in any way the provisions of any statute providing for sick, disability, vacation or other leave for public employees or any provision of any retirement or pension fund provided by law.

2. Section 1 of P.L.1999, c.251 (C.40A:14-199) is amended to read as follows:

C.40A:14-199 Immunities, benefits of search, rescue teams.

1. Whenever a law enforcement officer, firefighter, emergency medical technician or paramedic employed by a municipality, county or fire district of this State or the State participates in a national, multi-state, State, county, municipal or regional search and rescue task force or team, and that law enforcement officer, firefighter, emergency medical technician or paramedic suffers injury or death as a result of his participation in such search and rescue task force or team, he or his designee or legal representative shall be entitled to the salary, pension rights, worker's compensation, or other benefits as would have accrued if the injury or death had occurred in the performance of duties in the territorial jurisdiction in which he is employed.

As used in this section, "participate" and "participation" shall include taking part in meetings, training sessions, emergency drills, fire control, debris removal, emergency responses and such other similar activities of a search and rescue task force or team whether as an employment duty of the territorial jurisdiction of employment or as a volunteer, and shall include travel to and from such activities.

In addition, such officer, firefighter, emergency medical technician or paramedic shall have the same powers, authority and immunities as law enforcement officers, firefighters, emergency medical technicians and paramedics, as the case may be, in the municipality in which the assistance is being rendered.

A law enforcement officer, firefighter, emergency medical technician or paramedic employed by a municipality, county or fire district of this State or the State who participated in a search and rescue task force or team in response to the terrorist attacks of September 11, 2001 without the authorization of the municipality, county or fire district or the State and who suffered injury or death as a result of participation in that search and rescue task force or team shall be deemed an employee of this State for the purpose of payment of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of duties in the territorial jurisdiction in which he is employed.

Whenever a law enforcement officer, firefighter, emergency medical technician or paramedic employed by a municipality, county or fire district of this State or the State participates in a national, multi-state, State, county, municipal or regional search and rescue

task force or team without the authorization of the municipality, county or fire district or the State but pursuant to a Declaration of Emergency by the Governor of the State of New Jersey specifically authorizing volunteers to respond immediately to the emergency without requiring the authorization of the municipality, county or fire district or the State, and the law enforcement officer, firefighter, emergency medical technician or paramedic suffers injury or death as a result of participation in the search and rescue task force or team, he shall be deemed an employee of this State for the purpose of payment of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of duties in the territorial jurisdiction in which he is employed.

3. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 326

AN ACT concerning the electronic filing of certain workers' compensation reports and the confidentiality of workers' compensation records and revising various parts of the statutory law.

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

1. R.S.34:15-96 is amended to read as follows:

First report of accident.

34:15-96. First report of accident. Every employer who has made provisions for payment of obligations to an injured employee as required by article 5 of this chapter (R.S.34:15-70 et seq.) shall, upon the happening of any accident or the occurrence of any compensable occupational disease in its establishment, promptly furnish the insurance carrier, or the third party administrator, if applicable, with information necessary to enable it to carry out the intent of this chapter. Within three weeks after learning of an accident, or obtaining knowledge of the occurrence of a compensable occupational disease, every insurance carrier, third party administrator, statutory non-insured employer, including the State, county, municipality or school district, and duly authorized self-

insured employer not utilizing a third party administrator shall file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau with a report sent to the employer. The reports, if filed through interim vendors, shall not be used for any purpose other than formatting and transmitting this information to the Compensation Rating and Inspection Bureau and the Division of Workers' Compensation. For purposes of this section, "interim vendor" means a software supplier, network service provider, programming consultants or an insurance support organization, except that an insurance support organization may disclose the information to prevent the misrepresentation or nondisclosure of information which is material to an insurance claim.

If the employer disagrees with the report, the employer may prepare and sign an amended report and file it with the insurance carrier, or third party administrator, if applicable. Any resultant change shall be filed by the insurance carrier, or third party administrator, if applicable, with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau as provided for in this section.

The Compensation Rating and Inspection Bureau shall make provisions to insure that information received pursuant to this section shall be readily available to the Division of Workers' Compensation or any person authorized by the Commissioner of Labor pursuant to R.S.34:15-99.

2. R.S.34:15-98 is amended to read as follows:

Final report of accident.

34:15-98. Final report of accident. Not more than 26 weeks after an insurance carrier, third party administrator, self-insured employer or statutory non-insured employer learns that an employee has recovered so as to be able to resume work or has reached maximum medical improvement prior to resumption of work, the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer shall prepare a final report, and take the steps necessary to have it copied to the employee. The report shall be transmitted to the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in the manner prescribed in R.S.34:15-96. This report shall be fully

prepared before presentation to the employee. It shall be unlawful to present any injured employee with a blank report to be later filled out and filed with the Compensation Rating and Inspection Bureau.

If the employee disagrees with the report, the employee may forward written objections directly to the Division of Workers' Compensation with a copy to the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer, if applicable. Any resultant change to the final report shall be filed by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in the manner prescribed in R.S.34:15-96.

The report shall be retained by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer for 10 years. Any written objections forwarded by an employee to the Division of Workers' Compensation pursuant to this section shall be retained by the division for 10 years.

The Compensation Rating and Inspection Bureau shall insure that information received pursuant to this section shall be readily available to the Division of Workers' Compensation or any person authorized by the Commissioner of Labor pursuant to R.S.34:15-99.

3. R.S.34:15-99 is amended to read as follows:

Report not public.

34:15-99. Report not public. The reports of accidents filed with, or transmitted or forwarded to, the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau, shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages.

4. Section 1 of P.L.1966, c.164 (C.34:15-128) is amended to read as follows:

C.34:15-128 Limited right to inspect, copy records.

1. a. Notwithstanding any other provision of the chapter to which this act is a supplement or of any other law, no records maintained by the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau shall be disclosed to any person who

seeks disclosure of the records for the purpose of selling or furnishing for a consideration to others information from those records or reports or abstracts of workers' compensation records or work-injury records pertaining to any claimant. No information shall be disclosed from those records to any person not in the division, unless:

(1) The information is provided in a manner which makes it impossible to identify any claimant;

(2) The records are opened for the exclusive purpose of permitting a claimant, employer, insurance carrier or authorized agent of the claimant, employer or insurance carrier to conduct an investigation by or on behalf of the claimant, employer or insurance carrier in connection with any pending workers' compensation case to which the claimant, employer or insurance carrier is a party, and the party seeking access to the records certifies to the division that the information from the records will be used only for purposes directly related to the case;

(3) The records are opened for the exclusive purpose of permitting a third party directly involved in a workers' compensation case, including any workers' compensation lienholders, or an authorized agent of the third party, to conduct an investigation by or on behalf of the third party in connection with the case, and the party seeking access to the records certifies to the division that the information from the records will be used only for purposes directly related to the case;

(4) The records are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L.1983, c.320 (C.17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding;

(5) The division provides the information to another governmental agency pursuant to law, for a duly recognized purpose of that agency, which agency shall not subsequently disclose any of the information to any person, organization, entity or governmental agency not entitled to receive the information from the Compensation Rating and Inspection Bureau or the Division of Workers' Compensation pursuant to the workers' compensation law, R.S. 34:15-1 et seq.; or

(6) The information is information about the claimant requested by the claimant, in which case the division shall disclose the information and the claimant shall not be charged fees in excess of the cost of providing copies of the information.

b. Notwithstanding any other provision of law, no information from records maintained by the Compensation Rating and Inspection Bureau pertaining to any work injury or illness or workers' compensation claim shall be disclosed to any business or other member of the public unless the bureau discloses the information in a manner which makes it impossible to identify the claimant.

c. Notwithstanding any other provision of law, no information provided by the division to any other governmental agency pursuant to subsection a. of this section shall be disclosed by the agency to any business or other member of the public unless the information is disclosed to the business or other member of the public in a manner which makes it impossible to identify the claimant.

d. Notwithstanding the restrictions on disclosure set forth under subsections a. through c. of this section, a claimant may authorize the release of records of the claimant to a specific person not otherwise authorized to receive the records, by submitting written authorization for the release to the division specifically directing the division to release workers' compensation records to that person. However, no such authorization directing disclosure of records to a prospective employer shall be valid, nor shall an authorization permitting disclosure of records in connection with assessing fitness or capability for employment be valid, and no disclosure of records shall be made with respect thereto, unless requested pursuant to and consistent with the federal "Americans with Disabilities Act of 1990," 42 U.S.C. s.12101 et seq. and the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). It shall be unlawful for any person to consider for the purpose of assessing eligibility for a benefit, or as the basis for an employment-related action, an individual's failure to provide authorization under this subsection.

C.34:15-128.1 Short title.

5. Sections 6 through 9 of this act shall be known and may be cited as the "Workers' Compensation Medical Information Confidentiality Act."

C.34:15-128.2 Definitions relative to "Workers' Compensation Medical Information Confidentiality Act."

6. For the purposes of section 1 of P.L.1966, c.164 (C.34:15-128) and sections 6 through 9 of this amendatory and supplementary act:

"Disclose" means to release, transfer, open for inspection, make available for copying or otherwise divulge information to any person other than the individual who is the subject of the information.

"Division" means the Division of Workers' Compensation.

"Medical information" means information, whether oral or recorded in any form or medium, that is created or received by a health care provider regarding an individual which is or may be used in connection with a workers' compensation case, or that is provided to the employer or its workers' compensation insurer or their agents in connection with the case, and relates to an individual's past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual.

"Workers' compensation case" or "case" means any case in which an individual seeks workers' compensation benefits, whether or not the individual files a formal claim with the division.

C.34:15-128.3 Disclosure of medical information.

7. a. In any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to disclose any medical information regarding the individual to any person other than a participant in that workers' compensation case, a reinsurer, the health care provider, medical and non-medical experts retained in connection with the case, the division, or the Compensation Rating and Inspection Bureau, except under the following circumstances:

(1) The information is disclosed in a manner that makes it impossible to ascertain the identity of the individual;

(2) The information is collected, used or disclosed to or from an insurance support organization, provided that the information is used only to perform the insurance functions of claims settlement, detection and prevention of fraud, or detection and prevention of a misrepresentation or nondisclosure which is material to an insurance claim;

(3) Records containing the information are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L.1983, c.320 (C.17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding; or

(4) The information is disclosed to another employer or insurance carrier of that employer for the sole purpose of determining the credit to be given to the other employer or carrier pursuant to subsection d. of R.S.34:15-12 if the individual seeks compensation from the other employer or insurance carrier.

b. The Commissioner of Banking and Insurance shall have the power to examine and investigate the affairs of every insurance support organization that receives information pursuant to this section in order to determine whether the insurance support organization has been or is engaged in any conduct in violation of sections 6 through 9 of this amendatory and supplementary act.

C.34:15-128.4 Withholding information unlawful; certain circumstances.

8. Except for medical or non-medical evaluations performed for the purposes of evaluating the permanency of an employee's disability requested by the employer or its insurance carrier, in any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to withhold from the individual any medical information they have regarding that individual which is requested by the individual, and if an individual requests the medical information, the individual shall not be charged fees in excess of the cost of providing copies of the information.

C.34:15-128.5 Violations, fine, penalty.

9. Any person who violates any provision of section 7 or 8 of this amendatory and supplementary act shall be subject to a fine of not less than \$100 nor more than \$1,000 or imprisonment for not more than 60 days or both.

Repealer.

10. R.S.34:15-97 is repealed.

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

Approved January 5, 2002.

CHAPTER 327

AN ACT concerning the transportation of certain school students 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:39-1.8 Payment by parents for transportation of certain pupils.

1. Any board of education which transports pupils to and from school pursuant to N.J.S.18A:39-1 may provide, on a space-available basis, for the transportation of elementary school pupils who live less than two miles from school and secondary school pupils who live less than two and a half miles from school along an established school bus route, and may require that if the parent, guardian or other person having legal custody of the child elects to have the pupil transported, the parent, guardian or other person having legal custody of the child shall pay all or a part of the costs of that transportation. A board of education may also provide, on a space-available basis, for the transportation of elementary school pupils who live less than two miles and secondary school pupils who live less than two and a half miles from any not for profit nonpublic school which satisfies the maximum distance requirements set forth in N.J.S.18A:39-1 along an established school bus route, and may require that if the parent, guardian or other person having legal custody of the child elects to have the pupil transported, the parent, guardian or other person having legal custody of the child shall pay all or a part of the costs of that transportation. The costs of the transportation shall be paid at the time and in the manner determined by the board of education, provided that the costs shall be equitable for both public and nonpublic pupils.

A board of education shall notify the Department of Education when it elects to provide transportation for pupils under the provisions of this act.

C.18A:39-1.9 Payment not required based on financial hardship.

2. A board of education which provides for the transportation of pupils pursuant to section 1 of this act may not exclude from this transportation any pupil whose parent, legal guardian or other person having legal custody of the child is unable to pay the costs of that transportation because of financial hardship. In determining financial hardship, the criteria shall be the same as the Statewide eligibility standards established by the State Board of Education for free and reduced price meals under the State school lunch program.

3. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 328

AN ACT exempting certain emergency volunteers from the 7-day waiting period for workers' compensation and amending R.S.34:15-14 and R.S.34:15-75.

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

1. R.S.34:15-14 is amended to read as follows:

Waiting period.

34:15-14. Except as provided pursuant to R.S.34:15-75, no compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days, whether the days of disability immediately follow the accident, or whether they be consecutive or not. These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period. Should the total period of disability extend beyond seven days, additional compensation shall at once become payable covering the above prescribed waiting period.

2. R.S.34:15-75 is amended to read as follows:

Compensation for injury, death provided for certain volunteers.

34:15-75. Compensation for injury and death, either or both, of any volunteer fireman, county fire marshal, assistant county fire marshal, volunteer first aid or rescue squad worker, volunteer driver of any municipally-owned or operated ambulance, forest fire warden or forest fire fighter employed by the State of New Jersey, member of a board of education, special reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, emergency management volunteer doing emergency management service, or any volunteer worker for the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall:

- a. Be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation by this chapter authorized; and

b. Not be subject to the seven-day waiting period provided in R.S.34:15-14.

3. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 329

AN ACT concerning workers' compensation and temporary disability benefits and amending P.L.1948, c.110.

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

1. Section 6 of P.L.1948, c.110 (C.43:21-30) is amended to read as follows:

C.43:21-30 Nonduplication of benefits.

6. Nonduplication of benefits. No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other state or of the federal government. Nor shall any benefits be required or paid under this act for any period with respect to which benefits, other than benefits for permanent partial or permanent total disability previously incurred, are paid or payable on account of the disability of the covered individual under any workers' compensation law, occupational disease law, or similar legislation, of this State or of any other state or the federal government. Where a claimant's claim for compensation for temporary disability, under the provisions of subsection a. of R.S.34:15-12, is contested, and thereby delayed, and such claimant is otherwise eligible for benefits under this chapter, said claimant shall be paid the benefits provided by this chapter until and unless said claimant receives compensation under the provisions of subsection a. of R.S.34:15-12. In the event that workers' compensation benefits, other than benefits for permanent partial or permanent total disability previously incurred, are subsequently awarded for weeks with respect to which the claimant has received disability benefits pursuant to this act, the State fund, or the private plan, as the case

may be, shall be entitled to be subrogated to such claimant's rights in such award to the extent of the amount of disability payments made hereunder. Disability benefits otherwise required hereunder shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his most recent employer contributed on his behalf. If there has been a settlement of a workers' compensation claim pursuant to R.S.34:15-20 in an amount less than that to which the claimant would otherwise be entitled as disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), for the same illness or injury, the claimant shall be entitled to disability benefits for the period of disability, reduced by the amount from the settlement received by the claimant under R.S.34:15-20. The State fund or a private plan seeking to recover any amount of disability benefit payments from a workers' compensation award shall be required to demonstrate that the recovery is in compliance with the provisions of this section.

2. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 330

AN ACT concerning enforcement actions relating to unauthorized changes in telecommunications service providers and amending P.L.1998, c.82.

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

1. Section 4 of P.L.1998, c.82 (C.56:8-89) is amended to read as follows:

C.56:8-89 Rules, regulations relative to telecommunications service providers.

4. The board, in consultation with the director, shall adopt rules and regulations relating to changes in telecommunications service providers that are consistent with federal law, rules and regulations and which, among other requirements, shall establish procedures for a customer to confirm a change in a telecommunications service provider made by another telecommunications service provider on behalf of the customer, establish procedures by which the new telecommunications service provider shall notify a customer of a

change in a telecommunications service provider, and set forth methods for enforcing those rules and regulations, pursuant to an agreement with the Federal Communications Commission. Such agreement shall include a provision which requires the board to issue an order citing the provision of federal law, rules or regulations of which a telecommunications service provider is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the telecommunications service provider of the right to a hearing on the matters contained in the order, whenever it appears to the board that the telecommunications service provider has violated any provision of federal law, rule or regulation relating to a change in telecommunications service providers where the customer of the telecommunications service provider is a resident of this State.

C.56:8-89.1 Rules, regulations to enforce FCC agreement.

2. The board shall promulgate, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to effectuate the purposes of this act, including the methods for enforcing those rules and regulations pursuant to an agreement with the Federal Communications Commission.

3. This act shall take effect 90 days after enactment.

Approved January 5, 2002.

CHAPTER 331

AN ACT providing for a federal-state partnership regarding a national decentralized criminal record system between this State, other states and the federal government.

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

C.53:1-32 "National Crime Prevention and Privacy Compact."

1. The Contracting Parties agree to the following:

OVERVIEW

(a) **IN GENERAL.**--This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice

purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) OBLIGATIONS OF PARTIES.--Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I--DEFINITIONS

In this Compact:

(1) ATTORNEY GENERAL.--The term "Attorney General" means the Attorney General of the United States.

(2) COMPACT OFFICER.--The term "Compact officer" means--

(A) with respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) with respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) COUNCIL.--The term "Council" means the Compact Council established under Article VI.

(4) CRIMINAL HISTORY RECORDS.--The term "criminal history records"--

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) CRIMINAL HISTORY RECORD REPOSITORY.--The term "criminal history record repository" means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for criminal history records and services in the State.

(6) CRIMINAL JUSTICE.--The term "criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional

supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) **CRIMINAL JUSTICE AGENCY.**--The term "criminal justice agency"--

(A) means--

(i) courts; and

(ii) a governmental agency or any subunit thereof that--

(I) performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes Federal and State inspectors general offices.

(8) **CRIMINAL JUSTICE SERVICES.**--The term "criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) **CRITERION OFFENSE.**--The term "criterion offense" means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) **DIRECT ACCESS.**--The term "direct access" means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) **EXECUTIVE ORDER.**--The term "Executive order" means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) **FBI.**--The term "FBI" means the Federal Bureau of Investigation.

(13) **INTERSTATE IDENTIFICATION SYSTEM.**--The term "Interstate Identification Index System" or "III System"--

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

(14) **NATIONAL FINGERPRINT FILE.**--The term "National Fingerprint File" means a database of fingerprints, or other uniquely

personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) NATIONAL IDENTIFICATION INDEX.--The term "National Identification Index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) NATIONAL INDICES.--The term "National indices" means the National Identification Index and the National Fingerprint File.

(17) NONPARTY STATE.--The term "Nonparty State" means a State that has not ratified this Compact.

(18) NONCRIMINAL JUSTICE PURPOSES.--The term "noncriminal justice purposes" means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) PARTY STATE.--The term "Party State" means a State that has ratified this Compact.

(20) POSITIVE IDENTIFICATION.--The term "positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) SEALED RECORD INFORMATION.--The term "sealed record information" means--

(A) with respect to adults, that portion of a record that is--

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) STATE.--The term "State" means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II--PURPOSES

The purposes of this Compact are to--

(1) provide a legal framework for the establishment of a cooperative Federal- State system for the interstate and Federal-State exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) require Party States to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III--RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI RESPONSIBILITIES.--The Director of the FBI shall--

(1) appoint an FBI Compact officer who shall--

(A) administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied

with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including-

(A) information from Nonparty States; and

(B) information from Party States that is available from the FBI through the III System, but is not available from the Party State through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) STATE RESPONSIBILITIES.--Each Party State shall--

(1) appoint a Compact officer who shall--

(A) administer this Compact within that State;

(B) ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) establish and maintain a criminal history record repository, which shall provide--

(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) COMPLIANCE WITH III SYSTEM STANDARDS.--In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) MAINTENANCE OF RECORD SERVICES.--

(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV--AUTHORIZED RECORD DISCLOSURES

(a) STATE CRIMINAL HISTORY RECORD REPOSITORIES.--To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) CRIMINAL JUSTICE AGENCIES AND OTHER GOVERNMENTAL OR NONGOVERNMENTAL AGENCIES.--The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) PROCEDURES.--Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which

procedures shall protect the accuracy and privacy of the records, and shall--

(1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

ARTICLE V--RECORD REQUEST PROCEDURES

(a) POSITIVE IDENTIFICATION.--Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) SUBMISSION OF STATE REQUESTS.--Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State's criminal history record repository. A State criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) SUBMISSION OF FEDERAL REQUESTS.--Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) FEES.--A State criminal history record repository or the FBI--

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) ADDITIONAL SEARCH.--

(1) If a State criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records-

(A) the FBI shall so advise the State criminal history record repository; and

(B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI--ESTABLISHMENT OF COMPACT COUNCIL

(a) ESTABLISHMENT.--

(1) IN GENERAL.--There is established a council to be known as the "Compact Council", which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) ORGANIZATION.--The Council shall--

(A) continue in existence as long as this Compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) MEMBERSHIP.--The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a two-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a three-year term, of whom--

(A) one shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) one shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a three-year term, of whom--

(A) one shall be a representative of State or local criminal justice agencies; and

(B) one shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a three-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a three-year term, and who shall be an employee of the FBI.

(c) CHAIRMAN AND VICE CHAIRMAN.--

(1) IN GENERAL.--From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council--

(A) shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

(B) shall serve a two-year term and may be reelected to only one additional two-year term.

(2) DUTIES OF VICE CHAIRMAN.--The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) MEETINGS.--

(1) IN GENERAL.--The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) QUORUM.--A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) RULES, PROCEDURES, AND STANDARDS.--The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) ASSISTANCE FROM FBI.--The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) COMMITTEES.--The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII--RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by two or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII--MISCELLANEOUS PROVISIONS

(a) RELATION OF COMPACT TO CERTAIN FBI ACTIVITIES.--Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) NO AUTHORITY FOR NONAPPROPRIATED EXPENDITURES.--Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) RELATING TO PUBLIC LAW 92-544.--Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivi-

sion or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX--RENUNCIATION

(a) IN GENERAL.--This Compact shall bind each Party State until renounced by the Party State.

(b) EFFECT.--Any renunciation of this Compact by a Party State shall--

(1) be effected in the same manner by which the Party State ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X--SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating State, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI--ADJUDICATION OF DISPUTES

(a) IN GENERAL.--The Council shall--

(1) have initial authority to make determinations with respect to any dispute regarding--

(A) interpretation of this Compact;

(B) any rule or standard established by the Council pursuant to Article V; and

(C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) DUTIES OF FBI.--The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) RIGHT OF APPEAL.--The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

2. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 332

AN ACT concerning traumatic brain injury, amending P.L.1992, c.87 and supplementing Title 30 of the Revised Statutes.

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

C.30:6F-1 Findings, declarations relative to traumatic brain injury.

1. The Legislature finds and declares that:
 - a. The Brain Injury Association of New Jersey has identified traumatic brain injury as the leading cause of death and disability among children and young adults in this country;
 - b. Since the late 1970's, advances in medical technology have enabled many persons with severe brain injury to survive these injuries;

c. Persons with brain injury may need specialized rehabilitation programs and other services geared to the specific needs of these individuals in order to live their lives to the maximum potential;

d. Most forms of insurance, both public and private, that are available to people with brain injury do not cover the rehabilitative and long-term care needs of these individuals;

e. People with brain injury and their families too often must choose between financial hardship and discontinuing critical treatment and services due to the substantial long term costs not paid for by their insurance coverage; and

f. Providing treatment methods and services to people with brain injury must be a priority for the State.

C.30:6F-2 Definitions relative to traumatic brain injury.

2. As used in this act:

"Council" means the New Jersey Advisory Council on Traumatic Brain Injury established pursuant to section 3 of this act; and

"Fund" means the Traumatic Brain Injury Fund established pursuant to section 5 of this act.

C.30:6F-3 New Jersey Advisory Council on Traumatic Brain Injury.

3. a. There is established in the Department of Human Services the New Jersey Advisory Council on Traumatic Brain Injury.

b. The council shall be composed of 26 members as follows: the Commissioners of Human Services, Education, Health and Senior Services, Community Affairs, Labor and Banking and Insurance, the Attorney General and the State Treasurer, or their designees, who shall serve ex officio and 18 public members, who shall be appointed by the Governor, with the advice and consent of the Senate. Of the public members, eight shall be survivors of traumatic brain injury or the family members of these persons and at least five shall be representatives of the following groups: public or private health-related organizations, disability advisory or planning groups within the State, the Brain Injury Association of New Jersey, injury control programs at the State or local level, and the Center for Health Statistics in the Department of Health and Senior Services for data research purposes.

c. Public members shall serve for a term of three years from the date of their appointment and until their successors are appointed and qualified; except that of the members first appointed, six shall serve for a term of one year, six shall serve for a term of two years and six shall serve for a term of three years. Vacancies shall be filled for the balance of the unexpired term in the same manner as

the original appointments were made. A member of the council shall be eligible for reappointment.

d. The public members who are serving on the New Jersey Advisory Council on Traumatic Brain Injury established by Executive Order No. 84 of 1998, on the effective date of this act may complete the duration of their term as members of the council established pursuant to this act and are eligible for appointment to the council established pursuant to this act.

e. The members of the council shall meet quarterly and the Commissioner of Human Services, or his designee, shall serve as chair of the council.

f. The members of the council shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses actually incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the council for this purpose.

C.30:6F-4 Duties of council.

4. The council shall:

a. Advise and make recommendations to the Department of Human Services and other related State agencies on ways to improve and develop services regarding traumatic brain injury, including the coordination of these services between public and private entities;

b. Encourage citizen participation through the establishment of public hearings and other types of community outreach and prevention activities;

c. Encourage and stimulate research, public awareness, education and prevention activities;

d. Oversee any programs created under the federal law, Pub. L.104-166, known as the Traumatic Brain Injury Act, and any successive amendments to that act, and report to the federal government regarding these programs; and

e. Advise the Commissioner of Human Services on the administration of the Traumatic Brain Injury Fund established pursuant to section 5 of this act.

C.30:6F-5 "Traumatic Brain Injury Fund."

5. a. There is established in the Department of the Treasury a nonlapsing, revolving fund to be known as the "Traumatic Brain Injury Fund." This fund shall be the repository for monies provided pursuant to subsection b. of section 1 of P.L.1992, c.87 (C.39:3-8.2)

and any other funds approved by the Department of Human Services or the council.

b. The State Treasurer is the custodian of the fund and all disbursements from the fund shall be made by the State Treasurer upon vouchers signed by the Commissioner of Human Services or his designee. The monies in the fund shall be invested and reinvested by the Director of the Division of Investment in the Department of the Treasury as are other trust funds in the custody of the State Treasurer, in the manner provided by law. Interest received on the monies in the fund shall be credited to the fund.

C.30:6F-6 Distribution of monies.

6. a. Monies in the Traumatic Brain Injury Fund shall be distributed by the Department of Human Services for the following purposes:

(1) as the payer of last resort, for the costs of post-acute care, services and financial assistance provided in this State to residents of this State who have survived neuro-trauma with a traumatic brain injury; and

(2) public information and prevention education coordinated by the Brain Injury Association of New Jersey.

b. The department, in consultation with the council, shall establish eligibility criteria for the post-acute care, services and financial assistance provided pursuant to this section. Expenditures for traumatic brain injury care shall be made by the department.

(1) Total expenditures on behalf of any one eligible person shall not exceed \$100,000, with no more than \$15,000 to be expended for any 12-month period; except that a person may apply to the department for a waiver of these expenditure limits.

(2) Expenditures shall be made only if comparable resources are not available or are not able to be delivered in a timely manner.

(3) To the extent of the assistance it has provided, the fund shall have first claim to any future monies received by the person with traumatic brain injury as the result of a settlement or other payment made in connection with the traumatic brain injury.

(4) In the event the department is unable to provide funds to all eligible persons, the department, in consultation with the council, may establish an order of selection.

c. The department shall accept applications for disbursements of available money from the fund and maintain records of all disbursements made from the fund and monies received as gifts and donations. The department shall utilize existing State resources and

staff of participating State agencies, businesses and nonprofit organizations whenever practicable.

C.30:6F-7 Annual report on status of fund.

7. The Department of Human Services shall report annually on the status of the fund to the Governor and to the Senate and General Assembly committees with responsibility for issues affecting health or human services. The report shall include information about the number of beneficiaries of the fund, average expenditures per beneficiary and the average income and expenditures of persons or families who received financial assistance from the fund. The department also may make recommendations for changes in the law and any regulations governing the fund.

C.30:6F-8 Rules, regulations.

8. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations necessary to effectuate the purposes of this act.

9. Section 1 of P.L.1992, c.87 (C.39:3-8.2) is amended to read as follows:

C.39:3-8.2 Additional fees.

1. a. In addition to the motor vehicle registration fees imposed pursuant to the provisions of chapter 3 of Title 39 of the Revised Statutes, the director shall impose and collect an additional fee of \$1 to be deposited in the New Jersey Emergency Medical Service Helicopter Response Program Fund created pursuant to section 2 of P.L.1992, c.87 (C.26:2K-36.1).

b. In addition to the motor vehicle registration fees imposed pursuant to the provisions of chapter 3 of Title 39 of the Revised Statutes, the director shall impose and collect an additional fee of \$.50 to be deposited in the Traumatic Brain Injury Fund established pursuant to section 5 of P.L.2001, c.332 (C.30:6F-5).

10. This act shall take effect immediately; provided, however, that section 9 shall remain inoperative until the first day of the sixth month following enactment

Approved January 5, 2002.

CHAPTER 333

AN ACT concerning the provision of certain health care services at schools in Newark and supplementing Title 30 of the Revised Statutes.

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

C.30:4D-17.19 HMOs, certain, to contract for services provided at certain Newark schools.

1. Every health maintenance organization under contract with the Division of Medical Assistance and Health Services in the Department of Human Services that provides health care services to residents of Essex county shall contract with the Children's Hospital of New Jersey at Newark Beth Israel Medical Center for the provision of primary health care, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services, and dental services to be provided at designated schools in the City of Newark. Health maintenance organizations and the Children's Hospital of New Jersey shall establish the rates of reimbursement for the health care services, except that the rates shall not be less than the median rates that the health maintenance organization currently reimburses primary health care and dental providers in Essex county.

C.30:4D-17.20 Written informed parental consent.

2. The Children's Hospital of New Jersey shall obtain written informed consent of a parent or guardian for the provision of primary health care and dental services prior to providing any health care services to a child at a designated school pursuant to this act.

C.30:4D-17.21 Approval as provider of psychological services.

3. The Division of Medical Assistance and Health Services in the Department of Human Services shall approve the Children's Hospital of New Jersey as a participating provider of psychological services under the Medicaid program pursuant to this act.

C.30:4D-17.22 Compliance with licensure, Medicaid requirements; authorization.

4. a. The Children's Hospital of New Jersey shall comply with all State licensure and Medicaid requirements before any health care services may be provided at the designated schools pursuant to this act.

b. The Children's Hospital of New Jersey shall obtain authorization in writing from the Newark Board of Education to provide health care services at designated schools pursuant to this act.

5. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 334

AN ACT concerning computer crime and amending P.L.1998, c.134.

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

1. Section 3 of P.L.1998, c.134 (C.52:17B-193) is amended to read as follows:

C.52:17B-193 Establishment, maintenance of information available through the Internet, continuing educational program; hotline telephone service.

3. a. The department shall establish and maintain information available through the internet. The information shall include but not be limited to guidelines and recommendations on computer ethics, proper methods for reporting high technology crimes, safe computing practices for children and their families, and methods to filter, screen or block the receipt of objectionable material on interactive computer services.

b. The department shall design a continuing educational program to inform law enforcement, educational, civic and business groups on the emerging issues of high technology crimes including those perpetrated through the use of interactive computer services. This continuing educational program shall be made available by the department through the internet.

c. The department, in conjunction with the Statewide Computer Crime Task Force, shall establish and maintain a 24-hour toll-free hotline telephone service. The department shall take appropriate steps to publicize the hotline. The hotline shall receive and respond to inquiries or complaints from members of the public reporting computer crime, including but not limited to online child pornography; cyber-stalking; threats of violence in schools or other institutions; internet fraud, and unauthorized intrusions into computer systems.

2. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 335

AN ACT establishing the New Jersey Commission on Programs for Gifted Students and making an appropriation.

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

1. The Legislature finds and declares that:
 - a. gifted children have need for special academic programs in their schools;
 - b. public schools must provide for those needs as well as encourage and support gifted children;
 - c. gifted children require early identification and intervention, which must be provided by the public schools;
 - d. gifted children must have an appropriate curriculum adapted to meet the pace and depth of their learning needs in order to reach their full potential and development;
 - e. gifted and talented children are not disproportionately concentrated among members of any particular racial or ethnic group or gender;
 - f. public schools must provide viable curriculum modifications for gifted students for their cognitive, creative and emotional needs; and
 - g. it is appropriate to establish a commission to study the most effective way to implement programs for gifted children in New Jersey public schools.

2. There is established the New Jersey Commission on Programs for Gifted Students. The commission shall consist of 17 members as follows: two members of the Senate who shall be appointed by the President of the Senate and who shall not be of the same political party; two members of the General Assembly who shall be appointed by the Speaker of the General Assembly and who shall not be of the same political party; 12 public members who shall be appointed by the Governor, including two representatives of the New Jersey Association for Gifted Children; two representatives of higher education who work in teacher preparation programs; two students at New Jersey public institutions of higher education who were previously enrolled in programs for gifted students; one representative each as recommended by the New Jersey Education Association, the New Jersey Principals and Supervisors Association,

the New Jersey Association of School Administrators, the New Jersey Association of School Business Officials, the New Jersey School Boards Association, and the New Jersey Congress of Parents and Teachers; and the Commissioner of Education or a designee. Vacancies in the commission shall be filled in the same manner as the original appointments were made. Members of the commission shall serve without compensation.

3. The commission shall organize within 30 days after the appointment of its members and shall select a chairperson and a vice-chairperson from among its appointed members and a secretary who need not be a member of the commission.

4. It shall be the duty of the commission to study the most effective and efficient method to implement programs for gifted children in New Jersey public schools, including, but not limited to, the identification of gifted children, the provision of programming services, the funding of the services, policies and procedures for the education of school personnel in the needs and appropriate instructional strategies for gifted children, and the appropriate method for program evaluation.

5. Staff and related support services shall be provided to the commission by the Office of Legislative Services. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency which it may require and as may be available to it for its purposes.

6. The commission shall issue a final report of its findings and recommendations, including any recommended legislation, to the Governor and the Legislature no later than six months after the date of the organizational meeting of the commission.

7. There is appropriated from the General Fund \$5,000 to the commission to effectuate the purposes of this act

8. This act shall take effect immediately and shall expire 30 days after the submission of the final report of the commission.

Approved January 5, 2002.

CHAPTER 336

AN ACT changing the population requirements for counties of the fifth and sixth classes and amending N.J.S.40A:6-1.

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

1. N.J.S.40A:6-1 is amended to read as follows:

Classification of counties for legislative purposes.

40A:6-1. For legislative purposes, counties are classified as follows based upon their population as ascertained by the most recent federal decennial census:

- a. First class--counties having a population of more than 550,000 and a population density of more than 3,000 persons per square mile;
- b. Second class-- all other counties having a population of more than 200,000 except such counties bordering on the Atlantic ocean;
- c. Third class--counties having a population of not less than 50,000 but not more than 200,000 except such counties bordering on the Atlantic ocean;
- d. Fourth class--counties having a population of less than 50,000 except such counties bordering on the Atlantic ocean;
- e. Fifth class--counties bordering on the Atlantic ocean having a population of more than 125,000;
- f. Sixth class--counties bordering on the Atlantic ocean having a population of not more than 125,000.

2. This act shall take effect immediately and shall be retroactive to July 1, 2001.

Approved January 5, 2002.

CHAPTER 337

AN ACT canceling an appropriation made pursuant to P.L.1999, c.203 and appropriating \$101,300,000 from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of the "Port of New Jersey Revitalization, Dredging, Environ-

mental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70.

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

1. The amount previously appropriated by section 1 of P.L.1999, c.203 is canceled.

2. There is appropriated to the Office of Maritime Resources in the Department of Transportation from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, the sum of \$101,300,000 to cover the cost of dredging the Port Jersey channel, located in the county of Hudson, in the port region to a depth of 50 feet.

3. Any amount of the monies appropriated pursuant to section 2 of this act which is not expended for the project set forth therein shall be returned for deposit into the "1996 Dredging and Containment Facility Fund."

4. The expenditure of funds appropriated by this act is subject to the provisions and conditions of P.L.1996, c.70.

5. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 338

AN ACT concerning autism and supplementing P.L.1999, c.105 (C.30:6D-56 et seq.).

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

C.30:6D-62.1 Annual appropriation to Governor's Council for Medical Research and Treatment of Infantile Autism.

1. Beginning in Fiscal Year 2001 and in each fiscal year thereafter, the Governor shall recommend and the Legislature shall

appropriate \$1,500,000 from the General Fund to the Governor's Council for Medical Research and Treatment of Infantile Autism established pursuant to P.L.1999, c.105 (C.30:6D-56 et seq.).

2. This act shall take effect July 1, 2001 and if enacted after that date shall be retroactive to that date.

Approved January 5, 2002.

CHAPTER 339

AN ACT concerning the definitions of person with a disability and senior citizen for certain purposes and amending P.L.1999, c.129.

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

1. Section 1 of P.L.1999, c.129 (C.56:8-14.2) is amended to read as follows:

C.56:8-14.2 Definitions relative to certain deceptive consumer practices.

1. As used in this act:

"Fund" means the Consumer Fraud Education Fund created pursuant to section 5 of this act.

"Pecuniary injury" shall include, but not be limited to: loss or encumbrance of a primary residence, principal employment, or source of income; loss of property set aside for retirement or for personal or family care and maintenance; loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the senior citizen or person with a disability.

"Person with a disability" means a natural person who has a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide animal, wheelchair, or other remedial appliance or device, or from any mental, psychological or developmental disability resulting from

anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.

"Senior citizen" means a natural person 60 years of age or older.

2. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 340

AN ACT concerning the Nurse Multistate Licensure Compact and supplementing Title 45 of the Revised Statutes.

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

C.45:11A-1 Nurse Multistate Licensure Compact.

1. The State of New Jersey enacts and enters into the Nurse Multistate Licensure Compact with all other jurisdictions that legally join in the compact in the form substantially as follows:

Article I. Findings and Statement of Purpose.

1. The party states to this compact find that:
 - a. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
 - b. Violations of nurse licensure and other laws relating to the practice of nursing may result in injury or harm to the public;
 - c. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
 - d. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and
 - e. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and the states.
2. The general purposes of this compact are to:

- a. Facilitate the states' responsibility to protect the health and safety of the public;
- b. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- c. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;
- d. Promote compliance with the laws governing the practice of nursing in each jurisdiction; and
- e. Through the mutual recognition of party state licenses, authorize the party states to hold a nurse accountable for meeting all nurse practice laws in the state in which the patient is located at the time that care was rendered.

Article II. Definitions.

3. For the purposes of this compact, and of any supplemental or concurring legislation enacted under this compact, except as may be otherwise required by the context:
 - a. "Adverse action" means a home or remote state action.
 - b. "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.
 - c. "Compact" means this Nurse Multistate Licensing Compact.
 - d. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, that is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.
 - e. "Current significant investigative information" means investigative information that indicates a licensee:
 - (1) has committed more than a minor infraction; or
 - (2) represents an immediate threat to public health and safety.
 - f. "Home state" means the party state that is the nurse's primary state of residence.
 - g. "Home state action" means any administrative, civil, equitable, or criminal action permitted by the laws of the home state that is imposed on a nurse by the licensing board or other authority of the home state. "Home state action" includes: revocation, suspension or probation of a licensee; or any other action that affects a nurse's authorization to practice.
 - h. "Licensee" means a person licensed by the New Jersey Board of Nursing or the nurse licensing board of a party state.

- i. "Licensing board" means a party state's regulatory agency that is responsible for licensing nurses.
- j. "Multistate licensure privilege" means the current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in a party state.
- k. "Nurse" means a registered nurse or a licensed practical or vocational nurse as those terms are defined by the laws of each party state.
- l. "Party state" means any state that has adopted this compact.
- m. "Remote state" means the party state, other than the home state:
 - (1) where the patient is located at the time nursing care is provided; or
 - (2) in the case of the practice of nursing that does not involve a patient, where the recipient of nursing practices is located.
- n. "Remote state action" means any:
 - (1) administrative, civil, equitable, or criminal action permitted by the laws of the remote state which are imposed on a nurse by the remote state's nurse licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state; and
 - (2) cease and desist or other injunctive or equitable orders issued by remote states or their licensing boards.
- o. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- p. "State practice laws" means those individual party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for disciplining nurses. "State practice laws" does not include the initial qualifications for licensure or the requirements necessary to obtain and retain a license, except for the qualifications and requirements of the home state.

Article III. General Provisions and Jurisdiction.

- 4. a. A license to practice registered nursing issued by a home state to a resident of that state shall be recognized by each party state as authorization for a multistate licensure privilege to practice as a registered nurse in a party state. A license to practice practical or vocational nursing issued by a home state to a resident in that state

shall be recognized by each party state as authorization for a multistate licensure privilege to practice as a licensed practical or vocational nurse in a party state. In order to obtain or retain a license, an applicant shall meet the home state's qualifications for licensure and license renewal, as well as other applicable state laws.

b. Party states may, in accordance with the due process laws of that state, limit, suspend or revoke the multistate licensure privilege of any licensee to practice in the state and may take any other actions under the applicable state laws necessary to protect the health and safety of the citizens of the party state. If a party state takes an action authorized by this section, it shall promptly notify the administrator of the coordinated licensure information system. The administrator shall promptly notify the home state of any actions by remote states.

c. Every licensee practicing in a party state shall comply with the state practice laws of the state in which the patient is located at the time that care is rendered. The practice of nursing is not limited to patient care, but shall include all nursing practice, as defined by the practice laws of a party state. The practice of nursing in a party state shall subject a nurse to the jurisdiction of the nurse licensing board and the laws and courts of the party state.

d. This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

e. Persons not residing in a party state may continue to apply for nurse licensure in party states as provided for under the laws of each party state. The license granted to the person shall not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

Article IV. Application for Licensure in a Party State.

5. a. Upon receiving an application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether:

(1) the applicant holds or has ever held a license issued by any other state;

(2) there are any restrictions on the applicant's multistate licensure privilege; and

(3) any other adverse action by any state has been taken against the applicant's license.

b. A licensee in a party state shall hold licensure in only one party state at a time, which license shall be issued by the home state.

c. A licensee who intends to change his primary state of residence may apply for licensure in the new home state in advance of the change; however, a new license shall not be issued by a party state until after the licensee provides evidence of the change in the primary state of residence that is satisfactory to the new home state's licensing board.

d. When a licensee changes his primary state of residence by moving:

(1) between two party states and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) from a nonparty state to a party state and obtains a license from the new home state, the license issued by the nonparty state shall not be affected and shall remain in full force if the laws of the nonparty state so provide; and

(3) from a party state to a nonparty state, the license issued by the former home state converts to an individual state license that is valid only in the former home state. The license does not grant the multistate licensure privilege to practice in other party states.

Article V. Adverse Actions.

6. a. The remote state's nurse licensing board shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for the actions, if known. The remote state's nurse licensing board shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator shall promptly notify the home state of any such reports.

b. The party state's nurse licensing board may complete any pending investigation of a licensee who changes his primary state of residence during the course of an investigation. It may also take appropriate action against a licensee, and shall promptly report the conclusion of the investigation to the administrator of the coordinated licensure information system. The administrator shall promptly notify the new home state of any action taken against a licensee.

c. A remote state may take adverse action that affects the multistate licensure privilege to practice within that party state; however, only the home state may take adverse action that affects a license that was issued by the home state.

d. For purposes of taking adverse action, the home state's nurse licensing board shall give the same priority and effect to the conduct reported by a remote state that it would if the conduct had occurred in the home state. The board shall apply its own state laws to determine the appropriate action that should be taken against the licensee.

e. The home state may take adverse action based upon the factual findings of the remote state, if each state follows its own procedures for imposing the adverse action.

f. Nothing in this compact shall prohibit a party state from allowing a licensee to participate in an alternative program instead of taking adverse action against the licensee. If required by the party state's laws, the licensee's participation in an alternative program shall be confidential information. Party states shall require licensees who enter alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

Article VI. Additional Authority Invested in Party State Nurse Licensing Boards.

7. Notwithstanding any other powers, party state nurse licensing boards may:

a. If otherwise permitted by state law, recover from the licensee the costs of investigating and disposing of cases that result in adverse action;

b. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a party state nurse licensing board for the attendance and testimony of witnesses or the production of evidence from another party state, shall be enforced in the other party state by any court of competent jurisdiction, according to the practice and procedure of that court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the laws of the party state where the witnesses or the evidence are located;

c. Issue cease and desist orders to limit or revoke a licensee's authority to practice in the board's state; and

d. Adopt uniform rules and regulations that are developed by the compact administrators pursuant to Article VIII of this compact.

Article VII. Coordinated Licensure Information System.

8. a. All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical or vocational nurses. This system shall include information on the licensure and disciplinary history of each licensee, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. Notwithstanding any other provision of law to the contrary, the party states' nurse licensing boards shall promptly report to the coordinated licensure information system any adverse action taken against licensees, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, and any denials of applications for licensure, and the reasons for the denials.

c. Current significant investigative information shall be transmitted through the coordinated licensure information system only to the party states' nurse licensing boards.

d. Notwithstanding any other provision of law to the contrary, all party states' nurse licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other individuals or entities without the express permission of the contributing party state.

e. Any personally identifiable information obtained by a party state nurse licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other individuals or entities except to the extent permitted by the laws of the party state contributing the information.

f. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall be expunged from the coordinated licensure information system.

g. The compact administrators, acting jointly and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

Article VIII. Compact Administration and Interchange
of Information.

9. a. The executive director of the nurse licensing board of each party state, or the executive director's designee, shall be the administrator of this compact for that state.

b. In New Jersey, the administrator of this compact shall be the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the director's designee.

c. To facilitate the administration of this compact, the compact administrator of each party state shall furnish to the compact administrators of all other party states any information and documents concerning each licensee, including a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information.

d. Compact administrators shall develop uniform rules and regulations to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, pursuant to Article VI of this compact.

Article IX. Immunity.

10. A party state, and the officers, employees, or agents of a party state's nurse licensing board, who act in accordance with this compact shall not be liable for any good faith act or omission committed while they were engaged in the performance of their duties under this compact. Good faith shall not include willful misconduct, gross negligence or recklessness.

Article X. Effective Date, Withdrawal and Amendment.

11. a. This compact shall become effective as to any state when it has been enacted into the laws of that state. A party state may withdraw from the compact by enacting a statute repealing the compact, but the withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the compact administrators of all other party states.

b. No withdrawal shall affect the validity or applicability of any report of adverse action taken by the nurse licensing board of a state that remains a party to the compact if the adverse action occurred prior to the withdrawal.

c. This compact does not invalidate or prevent any nurse licensure agreement or other cooperative agreement between a party

state and a nonparty state that is made in accordance with this compact.

d. This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states until it is enacted into the laws of all party states.

Article XI. Construction and Severability.

12. a. This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or the constitution of the party states, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected. If this compact is held to be contrary to the constitution of a party state, this compact shall remain in full force and effect as to the remaining party states, and to the party state affected as to all severable matters.

b. In the event party states find a need for settling disputes arising under this compact, the party states shall submit the issues in dispute to an arbitration panel that shall consist of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote states involved, and an individual appointed by the compact administrators of all of the party states involved in the dispute. The decision of a majority of the arbitrators shall be final and binding.

C.45:11A-2 Suspended, probationary nurse prohibited to practice in party state.

2. a. A State licensed nurse whose license is under suspension or under probation by the New Jersey Board of Nursing, or who is participating in an established treatment program which is an alternative to disciplinary action, shall not practice in any other party state during the term of the suspension, probation or participation without prior authorization from the other party state. The board may revoke the State license of a nurse under suspension, probation or participation who practices nursing in another party state without prior authorization from that state.

b. The multistate licensure privilege granted by this State pursuant to the compact is subject to revocation or other disciplinary action as the result of any disciplinary action imposed by a nurse's home state.

C.45:11A-3 Purpose of compact.

3. This compact is intended to facilitate the regulation of the practice of nursing and does not relieve employers from complying with contractual and statutorily imposed obligations.

C.45:11A-4 Provisions not abrogated, irreconcilable conflicts; omissions.

4. a. This compact shall not abrogate any provision in Title 45 of the Revised Statutes or any other title applicable to the practice of nursing in this State.

b. If there is an irreconcilable conflict between this compact and chapter 11 of Title 45 of the Revised Statutes, the compact shall control.

c. Omissions in this compact shall not be supplied by construction. In any instance of an omission from the compact, the remaining provisions of Title 45 of the Revised Statutes or other applicable statutory law, and any regulations adopted pursuant thereto, shall control.

C.45:11A-5 Applicability of compact.

5. The provisions of this act are applicable only to nurses whose home states are determined by the New Jersey Board of Nursing to have licensure requirements that are substantially equivalent or more stringent than those of New Jersey.

C.45:11A-6 Investigative, disciplinary powers unaffected.

6. Any investigative or disciplinary powers conferred on the Attorney General, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, and the New Jersey Board of Nursing under the provisions of P.L.1978, c.73 (C.45:1-14 et seq.) or other law, or under regulations adopted pursuant thereto, shall not be interpreted as limited in any way by the terms of the compact and shall be available in any investigation of the conduct of, or disciplinary action against, a remote state licensee practicing in New Jersey and of a New Jersey home state licensee.

C.45:11A-7 Tort claims defenses, immunity not waived.

7. Nothing in Article IX of the compact shall be deemed to waive or abrogate in any way any defense or immunity of a public entity or public employee under the common law or statutory law including, but not limited to, the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

C.45:11A-8 Withdrawal from compact.

8. The Governor may withdraw this State from the compact if the Attorney General notifies the Governor that a state that is a party to the compact has changed its licensure requirements to make them substantially lower than the requirements of this State, or that withdrawal from the compact is in the best interests of the health, safety and welfare of the citizens of this State.

9. This act shall take effect on January 1, 2002 and shall expire on January 1, 2007

Approved January 5, 2002.

CHAPTER 341

AN ACT concerning the transfer of service credit between the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System of New Jersey and amending chapter 66 of Title 18A of the New Jersey Statutes and P.L.1954, c.84.

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

1. N.J.S.18A:66-15.1 is amended to read as follows:

Transfer or purchase of credit for service in other systems.

18A:66-15.1. a. A member who is a member of another State-administered retirement system or pension fund at the time of enrollment in the Teachers' Pension and Annuity Fund and who does not contribute to the other system or fund after that time may transfer the service credit in the other system or fund to the Teachers' Pension and Annuity Fund upon application and transfer of the member's contributions from the other system or fund to the fund. If the member has withdrawn the contributions to the other retirement system or pension fund, the member may purchase credit for the service in the other system or fund. The purchase shall be made in the same manner and be subject to the same terms and conditions provided for the purchase of previous membership service by N.J.S.18A:66-9.

b. A member of the retirement system who had established service credit in a municipal or county retirement system or pension fund, and who was ineligible to transfer the service credit to the

retirement system and withdrew contributions from the municipal or county retirement system or pension fund, may purchase credit for all of the member's service in that retirement system or pension fund by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to the member's age at the time of the purchase, to the member's salary at that time, or to the highest annual compensation for service in this State for which contributions were made during any prior fiscal year of membership, whichever is greater. The terms of the purchase and the credit granted shall be identical, except as otherwise herein provided, to those stipulated for the purchase of previous membership service by members of the retirement system as provided by N.J.S.18A:66-9.

c. A member who is a member of the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), at the time of enrollment in the Teachers' Pension and Annuity Fund and who within three years of the date of that enrollment ceases to be an active contributing member of the Public Employees' Retirement System may transfer all service credit in the Public Employees' Retirement System to the Teachers' Pension and Annuity Fund upon application and transfer of the member's contributions from the Public Employees' Retirement System to the Teachers' Pension and Annuity Fund. If the member has withdrawn the contributions to the Public Employees' Retirement System, the member may purchase credit for the service. The purchase shall be made in the same manner and be subject to the same terms and conditions provided for the purchase of previous membership service by N.J.S.18A:66-9.

2. Section 14 of P.L.1954, c.84 (C.43:15A-14) is amended to read as follows:

C.43:15A-14 Transfer or purchase of credit for service in other systems.

14. a. A member who is a member of another State-administered retirement system or pension fund at the time of enrollment in the Public Employees' Retirement System and does not contribute to the other system or fund after that time may transfer the service credit in the other system or fund to the Public Employees' Retirement System upon application and transfer of the member's contributions from the other system or fund to the system. If the member has withdrawn the contributions to the other retirement system or pension fund, the member may purchase credit for the service in the

other system or fund. The purchase shall be made in the same manner and be subject to the same terms and conditions provided for the purchase of previous membership service by section 8 of P.L.1954, c.84 (C.43:15A-8).

b. A member who is a member of the Teachers' Pension and Annuity Fund, established pursuant to N.J.S.18A:66-1 et seq., at the time of enrollment in the Public Employees' Retirement System and who within three years of the date of that enrollment ceases to be an active contributing member of the Teachers' Pension and Annuity Fund may transfer all service credit in the Teachers' Pension and Annuity Fund to the Public Employees' Retirement System upon application and transfer of the member's contributions from the Teachers' Pension and Annuity Fund to the Public Employees' Retirement System. If the member has withdrawn the contributions to the Teachers' Pension and Annuity Fund, the member may purchase credit for the service. The purchase shall be made in the same manner and be subject to the same terms and conditions provided for the purchase of previous membership service by section 8 of P.L.1954, c.84 (C.43:15A-8).

3. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 342

AN ACT revising certain mandates, requirements and procedures for local governments and amending, supplementing and repealing various parts of the statutory law.

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

C.52:13H-22 Findings, declarations relative to certain mandate requirements, procedures for local governments.

1. The Legislature finds and declares:

Over the past four decades, prior to adoption of the constitutional amendment prohibiting unfunded State mandates on local government, the State routinely and systematically imposed greater and greater numbers of mandates, orders, directives and burdens on local government. This web of mandates and burdens came about as the

result of the enactment and adoption of a plethora of unrelated laws and regulations addressing many and diverse issues. While these actions by State government occurred in order to address a variety of public concerns, they all shared a common philosophical underpinning: the mandatory implementation of State policy directives by local government officials.

While the overwhelming majority of these statutes and regulations was established by sincere-minded and well-intentioned public officials in order to address legitimate public concerns, the collective regulatory weight of these mandates on local officials continues to be a matter of deep concern and a subject that cries for legislative relief.

In response to this decades long pattern of seemingly inexorable increases in burdensome mandates from Trenton, local officials repeatedly petition the Legislature for relief. In response to entreaties of local officials, various committees of several Legislatures have determined to continue to address the problem of burdensome mandates on an expedited basis through the enactment of omnibus acts that repeal or modify many of those mandates, resolve administrative ambiguities and encourage more businesslike practices. This is the fourth such omnibus mandate relief act.

2. R.S.39:4-8 is amended to read as follows:

Commissioner of Transportation's approval required; exceptions.

39:4-8. a. Except as otherwise provided in this section, no ordinance or resolution concerning, regulating or governing traffic or traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, shall be of any force or effect unless the same is approved by the Commissioner of Transportation, according to law. The commissioner shall not be required to approve any such ordinance, resolution or regulation, unless, after investigation by him, the same shall appear to be in the interest of safety and the expedition of traffic on the public highways.

b. In the case of totally self-contained streets under municipal jurisdiction which have no direct connection with any street in any other municipality, or in the case of totally self-contained streets under county jurisdiction which have no direct connection with any street in any other county, the municipality or county may, by ordinance or resolution, as appropriate, without the approval of the Commissioner of Transportation, designate parking restrictions, no passing zones, mid-block crosswalks and crosswalks at intersections,

except that in the case of any streets under municipal jurisdiction, the municipality may, by ordinance, designate reasonable and safe speed limits and in the case of totally self-contained streets under county jurisdiction which have no direct connection with any street in any other county, the county may, by ordinance or resolution, as appropriate, designate reasonable and safe speed limits, and erect appropriate signs, designate any intersection as a stop or yield intersection and erect appropriate signs and place longitudinal pavement markings delineating the separation of traffic flows and the edge of the pavement, provided that the municipal or county engineer shall, under his seal as a licensed professional engineer, certify to the municipal or county governing body, as appropriate, that any designation or erection of signs or placement of markings: (1) has been approved by him after investigation by him of the circumstances, (2) appears to him to be in the interest of safety and the expedition of traffic on the public highways and (3) conforms to the current standards prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways, as adopted by the Commissioner of Transportation.

A certified copy of the adopted ordinance or resolution, as appropriate, shall be transmitted by the clerk of the municipality or county, as appropriate, to the commissioner within 30 days of adoption, together with a copy of the engineer's certification; a statement of the reasons for the engineer's decision; detailed information as to the location of streets, intersections and signs affected by any designation or erection of signs or placement of markings; and traffic count, accident and speed sampling data, when appropriate. The commissioner, at his discretion, may invalidate the provisions of the ordinance or resolution within 90 days of receipt of the certified copy if he reviews it and finds that the provisions of the ordinance or resolution are inconsistent with the Manual of Uniform Traffic Control Devices for Streets or Highways; are inconsistent with accepted engineering standards; are not based on the results of an accurate traffic and engineering survey; or place an undue traffic burden or impact on streets in an adjoining municipality or negatively affect the flow of traffic on the State highway system.

Nothing in this subsection shall allow municipalities to designate any intersection with any highway under State or county jurisdiction as a stop or yield intersection or counties to designate any intersection with any highway under State or municipal jurisdiction as a stop or yield intersection.

c. Subject to the provisions of R.S.39:4-138, in the case of any street under municipal or county jurisdiction, a municipality or county may, without the approval of the Commissioner of Transportation, do the following:

By ordinance or resolution:

- (1) prohibit or restrict general parking;
- (2) designate restricted parking under section 1 of P.L.1977, c.309 (C.39:4-197.6);
- (3) designate time limit parking;
- (4) install parking meters.

By ordinance, resolution or regulation:

- (1) designate loading and unloading zones and taxi stands;
 - (2) approve street closings for periods up to 48 continuous hours;
- and
- (3) designate restricted parking under section 1 of P.L.1977, c.202 (C.39:4-197.5);

Nothing in this subsection shall allow municipalities or counties to establish angle parking or to reinstate or add parking on any street, or approve the closure of streets for more than 48 continuous hours, without the approval of the Commissioner of Transportation.

d. A municipality or county may, by ordinance or resolution, as appropriate, in any street under its jurisdiction, install or place an in-street pedestrian crossing right-of-way sign at a marked crosswalk or unmarked crosswalk at an intersection. The installation shall be subject to guidelines that shall be issued by the Commissioner of Transportation after consultation with the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety. The guidelines shall be aimed at ensuring safety to both pedestrians and motorists including, but not limited to, the proper method of sign installation, dimensions, composition of material, proper placement points and maintenance. A certified copy of the adopted ordinance or resolution shall be transmitted to the commissioner within 30 days of adoption. The commissioner, at his discretion, may invalidate the provisions of the ordinance or resolution within 90 days of receipt of the certified copy if he reviews it and finds that the provisions of the ordinance or resolution are inconsistent with the guidelines issued pursuant to this subsection. A claim against the State or a municipality or county for damage or injury under this subsection for a wrongful act or omission shall be dismissed if the municipality or county is deemed to have conformed to the guidelines required hereunder.

e. A municipality or county may, by resolution, in any street under its jurisdiction, designate stops, stations or stands for omnibuses. The designation shall be subject to guidelines that shall be issued by the Commissioner of Transportation. The guidelines shall be aimed at ensuring safety to both pedestrians and motorists including, but not limited to, the proper method of sign installation, dimensions, composition of material, proper placement points and maintenance. A certified copy of the adopted resolution shall be transmitted to the commissioner within 30 days of adoption. The commissioner, at his discretion, may invalidate the provisions of the ordinance or resolution within 90 days of receipt of the certified copy if he reviews it and finds that the provisions of the ordinance or resolution are inconsistent with the guidelines issued pursuant to this subsection. A claim against the State or a municipality or county for damage or injury under this subsection for a wrongful act or omission shall be dismissed if the municipality or county is deemed to have conformed to the guidelines required hereunder.

3. Section 1 of P.L.1984, c.219 (C.39:4-183.1a) is amended to read as follows:

C.39:4-183.1a Installation of traffic control device, sign by municipality at request of school.

1. Notwithstanding any law to the contrary, a municipality may, upon the request of the appropriate board of education or, in the case of a private school, by the school's governing body, provide by resolution for the installation of a traffic control device or sign consistent with the current standards prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways as adopted by the Commissioner of Transportation, to regulate motor vehicle traffic at an intersection located within 300 feet of any public or private school; provided that the municipal or county engineer shall, under the engineer's seal as a licensed professional engineer, certify to the municipal or county governing body, as appropriate, that the traffic control or device has been approved by the engineer after the engineer's investigation of the circumstances. Before a resolution shall take effect, however, the governing body shall submit a copy of the resolution to the Commissioner of Transportation for his review and approval together with detailed information as to the location of streets, intersections and signs affected by any installation, traffic count, accident and speed sampling data when appropriate, the municipal or county engineer's certification, under the engineer's seal as a licensed professional

engineer, to the municipal or county governing body, and any other information as the commissioner may require. If the commissioner disapproves the resolution, he shall file his disapproval, in writing, with a statement of the reasons for his disapproval, with the governing body within 90 days following the receipt of the resolution. If the commissioner approves the resolution or fails to file his disapproval within the 90-day review period, the resolution shall take effect immediately.

For the purposes of this section, the term "public or private school" has the meaning that term is given in N.J.S.18A:1-1.

4. Section 1 of P.L.1952, c.195 (C.40:5-2.11) is amended to read as follows:

C.40:5-2.11 Use of parking meter revenues for off-street parking facilities.

1. The board of chosen freeholders of any county and the governing body of any municipality may by resolution appropriate and dedicate all or any portion of the revenues which it derives from parking meters in excess of the cost of purchase, installation, maintenance and operation of said parking meters, to the purposes of creation, purchase, construction and maintenance of off-street parking facilities.

5. Section 5 of P.L.1977, c.435 (C.40:43-66.39) is amended to read as follows:

C.40:43-66.39 Proposal for formation of joint municipal consolidation study commission.

5. The governing body of any municipality proposing to consolidate with one or more other municipalities may, by ordinance or resolution, propose the formation of a joint municipal consolidation study commission as provided for in section 7 of this act. The ordinance or resolution shall state that the governing body is seeking the formation of a joint municipal consolidation study commission pursuant to the provisions of this act, and shall name the municipalities for which a consolidation study is proposed. Upon adoption of such ordinance or resolution, the clerk of the municipality adopting the ordinance or resolution shall forthwith transmit a certified copy thereof to the municipal clerk of each of the other municipalities named in the ordinance or resolution and to the clerk of the county in which such municipalities are located.

6. Section 7 of P.L.1977, c.435 (C.40:43-66.41) is amended to read as follows:

C.40:43-66.41 Question of forming consolidation commission submitted to voters; alternative methods.

7. a. If, within one year after the date on which the first ordinance or resolution, pursuant to section 5 of P.L.1977, c.435 (C.40:43-66.39), or the first petition, pursuant to section 6 of P.L.1977, c.435 (C.40:43-66.40), is filed with the clerk of the county, either an ordinance or a resolution or a certified petition is transmitted to the county clerk by each of the other municipalities named in the first such ordinance or a resolution or petition, then one of the following shall occur:

(1) The question of forming a consolidation commission shall be submitted to the voters of each of the municipalities named in such ordinances or resolutions or petitions in the following form:

"Shall a joint municipal consolidation study commission be formed to study the feasibility of consolidating (insert the names of each of the municipalities named in such ordinances or resolutions or petitions) into a single new municipality, to study the question of the form of government under which such new municipality should be governed, to study the feasibility of consolidating the local school districts of the aforesaid municipalities, and to make recommendations thereon; or, in the alternative, to make recommendations on the consolidation of certain municipal services?"

The question shall be submitted to the voters of each municipality so named in the ordinances or resolutions or petitions on the date for the next general election or on the date for the next regular municipal election, whichever shall first occur at least 60 days after the date of the filing with the county clerk of the final ordinance or resolution or petition necessary to require the submission of the question to the voters.

The public question submitted to the voters shall be deemed adopted, and a consolidation commission formed, if a majority of the votes cast on the question in each of the municipalities in which the question is submitted shall be in the affirmative; or

(2) An ordinance or resolution expressly creating a consolidation commission shall be adopted by each of the municipalities named in such ordinances or resolutions or petitions. The ordinance or resolution shall state that the governing body will not be submitting the question of forming a consolidation commission to the voters of that municipality by referendum. The ordinance or resolution shall state that the governing body is seeking the formation of a consolidation commission pursuant to P.L.1977, c.435 (C.40:43-66.35 et

seq.), and shall name the participating municipalities for which a consolidation commission is proposed. Upon adoption of the ordinance or resolution, the clerk of each participating municipality adopting the ordinance or resolution shall forthwith transmit a certified copy thereof to the municipal clerk of each of the other participating municipalities named in the ordinance or resolution, to the clerk of the county in which each participating municipality is located, and to the Commissioner of Community Affairs.

The ordinance or resolution forming a consolidation commission shall be deemed adopted, and a consolidation commission formed, if each participating municipality adopts an ordinance or resolution agreeing to participate in a consolidation commission pursuant to this subsection; or

(3) One or more of the municipalities named in such ordinances or resolutions or petitions shall submit the question of forming a consolidation commission to the voters pursuant to paragraph (1) of this subsection, and one or more of those municipalities shall adopt an ordinance or resolution expressly creating a consolidation commission pursuant to paragraph (2) of this subsection, in any combination, provided that each of the participating municipalities adopts the formation of a consolidation commission.

b. Nothing herein contained shall be construed to prevent the submission of the question of forming a consolidation commission to the voters of the municipalities pursuant to paragraph (1) of subsection a. of this section, or the forming of a consolidation commission by ordinance or resolution pursuant to paragraph (2) of subsection a. of this section, named in any combination of such ordinances or resolutions pursuant to section 5 of P.L.1977, c. 435 (C.40:43-66.39) and petitions pursuant to section 6 of P.L.1977, c.435 (C.40:43-66.40), provided that such ordinances or resolutions and petitions are substantively similar.

7. Section 27 of P.L.1977, c.435 (C.40:43-66.61) is amended to read as follows:

C.40:43-66.61 Prohibition on creation of joint municipal consolidation study commission while proceedings pending.

27. No ordinance or resolution may be adopted and no petition may be filed for the creation of a joint municipal consolidation study commission pursuant to sections 5 and 6 of this act while proceedings are pending under any other petition filed or ordinance adopted pursuant to the provisions of the "Optional Municipal Charter Law"

or any other general law relating to a change in the form of government in any of the participating municipalities. No ordinance or resolution may be adopted and no petition may be filed for the creation of such a commission pursuant to the provisions of this act within four years after the date on which the question of consolidation has been submitted to the voters pursuant to section 25 of this act; provided, however, that the adoption of an ordinance or resolution or the filing of a petition and the holding of any referendum thereafter under the provisions of the "Optional Municipal Charter Law" or other general law relating to a change in the form of government in any of the participating municipalities, if such proceedings have been completed, shall not preclude the participating municipalities from proceeding under the provisions of this act notwithstanding the fact that four years may not have expired since the completion of said proceedings.

8. Section 1 of P.L.1947, c.335 (C.40:48-2.16) is amended to read as follows:

C.40:48-2.16 Monument, memorial to commemorate service of armed forces.

1. The governing body of any municipality may, by resolution, provide for the construction and erection of a monument or memorial of a permanent character commemorative of the services provided by the men and women in the armed forces of the United States, or to provide for a contribution to part of the cost of any similar monument or memorial; provided, that any such resolution shall set forth the price in respect to the monument or memorial, including the type of the monument or memorial and the amount of money proposed to be expended or contributed.

9. Section 76 of P.L.1975, c.291 (C.40:55D-89) is amended to read as follows:

C.40:55D-89 Periodic examination.

76. Periodic examination. The governing body shall, at least every six years, provide for a general reexamination of its master plan and development regulations by the planning board, which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the county planning board. A notice that the report and resolution have been prepared shall be sent to the municipal clerk of each adjoining municipality, who may, on behalf of the governing body of the municipality, request a copy of the report and resolution. A

reexamination shall be completed at least once every six years from the previous reexamination.

The reexamination report shall state:

a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.

b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.

c. The extent to which there have been significant changes in the assumptions, policies, and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.

d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

e. The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

10. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

C.40A:4-45.3 Municipalities; budget limitation exceptions.

3. In the preparation of its budget a municipality shall limit any increase in said budget to 5% or the index rate, whichever is less, over the previous year's final appropriations subject to the following exceptions:

a. (Deleted by amendment, P.L.1990, c.89.)

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, P.L.1990, c.89.)

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or j. below;

d. All debt service, including that of a Type I school district;

e. Upon the approval of the Local Finance Board in the Division of Local Government Services, amounts required for funding a preceding year's deficit;

f. Amounts reserved for uncollected taxes;

g. (Deleted by amendment, P.L.1990, c.89.)

h. Expenditure of amounts derived from new or increased construction, housing, health or fire safety inspection or other service fees imposed by State law, rule or regulation or by local ordinance;

i. Any amount approved by any referendum;

j. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a municipality and any other municipality, county, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political subdivision of this State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60 through 13:17-76) by a constituent municipality to the intermunicipal account; (3) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part; and (4) any repayments under a loan agreement entered into in accordance with the provisions of section 5 of P.L.1992, c.89;

k. (Deleted by amendment, P.L.1987, c.74.)

l. Appropriations of federal, county, independent authority or State funds, or by grants from private parties or nonprofit organizations for a specific purpose, and amounts received or to be received from such sources in reimbursement for local expenditures. If a municipality provides matching funds in order to receive the federal, county, independent authority or State funds, or the grants from private parties or nonprofit organizations for a specific purpose, the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted;

m. (Deleted by amendment, P.L.1987, c.74.)

n. (Deleted by amendment, P.L.1987, c.74.)

o. (Deleted by amendment, P.L.1990, c.89.)

p. (Deleted by amendment, P.L.1987, c.74.)

q. (Deleted by amendment, P.L.1990, c.89.)

r. Amounts expended to fund a free public library established pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;

s. (Deleted by amendment, P.L.1990, c.89.)

t. Amounts expended in preparing and implementing a housing element and fair share plan pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et al.) and any amounts received by a municipality under a regional contribution agreement pursuant to section 12 of that act;

u. Amounts expended to meet the standards established pursuant to the "New Jersey Public Employees' Occupational Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

v. (Deleted by amendment, P.L.1990, c.89.)

w. Amounts appropriated for expenditures resulting from the impact of a hazardous waste facility as described in subsection c. of section 32 of P.L.1981, c.279 (C.13:1E-80);

x. Amounts expended to aid privately owned libraries and reading rooms, pursuant to R.S.40:54-35;

y. (Deleted by amendment, P.L.1990, c.89.)

z. (Deleted by amendment, P.L.1990, c.89.)

aa. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

bb. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

cc. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

dd. Expenditures of amounts actually realized in the local budget year from the sale of municipal assets if appropriated for non-recurring purposes or otherwise approved by the director;

ee. Any local unit which is determined to be experiencing fiscal distress pursuant to the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible municipality" as defined in section 3 of P.L.1987, c.75 (C.52:27D-118.26), and which has available surplus pursuant to the spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et seq.), may appropriate and expend an amount of that surplus approved by the director and the Local Finance Board as an exception to the spending limitation. Any determination approving the appropriation and expenditure of surplus as an exception to the spending limitations shall be based upon:

1) the local unit's revenue needs for the current local budget year and its revenue raising capacity;

2) the intended actions of the governing body of the local unit to meet the local unit's revenue needs;

3) the intended actions of the governing body of the local unit to expand its revenue generating capacity for subsequent local budget years;

4) the local unit's ability to demonstrate the source and existence of sufficient surplus as would be prudent to appropriate as an exception to the spending limitations to meet the operating expenses for the local unit's current budget year; and

5) the impact of utilization of surplus upon succeeding budgets of the local unit;

ff. Amounts expended for the staffing and operation of the municipal court;

gg. Amounts appropriated for the cost of administering a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but not including appropriations for claims payments by local member units;

hh. Amounts appropriated for the cost of implementing an estimated tax billing system and the issuance of tax bills thereunder pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);

ii. Expenditures related to the cost of conducting and implementing a total property tax levy sale pursuant to section 16 of P.L.1997, c.99 (C.54:5-113.5);

jj. Amounts expended for a length of service award program pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);

kk. Amounts expended to provide municipal services or reimbursement amounts to multifamily dwellings for the collection and disposal of solid waste generated by the residents of the multifamily dwellings. This subsection shall cease to be operative at the end of the first local budget year in which the municipality has fully phased in its reimbursement amount expenses;

ll. Amounts expended by a municipality under an interlocal services agreement entered into pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of the municipality that will receive the service may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

mm. Amounts expended under a joint contract pursuant to the "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et seq.) entered into after the effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of each participating municipality may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

nn. Amounts expended to pay the salaries of police officers hired under the federal "Community Oriented Policing Services" program, which was enacted as part of the "Violent Crime Control and Law Enforcement Act of 1994," Pub.L.No. 103, 108 Stat. 1796 (1994).

11. Section 37 of P.L.1995, c.259 (C.40A:10-17.1) is amended to read as follows:

C.40A:10-17.1 County, municipal, contracting unit employee permitted to waive benefits coverage under N.J.S.40A:10-16 et seq.

37. Notwithstanding the provisions of any other law to the contrary, a county, municipality or any contracting unit as defined in section 2 of P.L.1971, c.198 (C.40A:11-2) which enters into a

contract providing group health care benefits to its employees pursuant to N.J.S.40A:10-16 et seq., may allow any employee who is eligible for coverage as a dependent of the employee's spouse under that plan or another plan, including the State Health Benefits Program established pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.), offered by the spouse's employer, whether a public or private employer, to waive coverage under the county's, municipality's or contracting unit's plan to which the employee is entitled by virtue of employment with the county, municipality or contracting unit. The waiver shall be in such form as the county, municipality or contracting unit shall prescribe and shall be filed with the county, municipality or contracting unit. In consideration of filing such a waiver, a county, municipality or contracting unit may pay to the employee annually an amount, to be established in the sole discretion of the county, municipality or contracting unit, which shall not exceed 50% of the amount saved by the county, municipality or contracting unit because of the employee's waiver of coverage. An employee who waives coverage shall be permitted to resume coverage under the same terms and conditions as apply to initial coverage if the employee ceases to be covered through the employee's spouse for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall file a declaration with the county, municipality or contracting unit, in such form as the county, municipality or contracting unit shall prescribe, that the waiver is revoked. The decision of a county, municipality or contracting unit to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process.

C.52:27D-118.43 "Adopt a Municipality Program."

12. a. This section shall be known and may be cited as the "Adopt a Municipality Program."

b. The Commissioner of Community Affairs shall establish a business advisory board. The commissioner shall chair the board and shall appoint to the board members who represent private businesses and nonprofit entities that are interested and willing to contribute services and resources to municipalities. Members of the board shall serve three-year terms without compensation. The

commissioner shall appoint a program coordinator who shall administer the "Adopt a Municipality Program."

c. The board shall encourage and coordinate municipal-business partnership. The board shall solicit municipalities and business and nonprofit entities to participate in the program. The board shall compile a list of municipal needs and circulate the list among businesses and nonprofit entities. Support of "adopted" municipalities by businesses and nonprofit entities that participate in the program may include, but shall not be limited to, the supplying of services, personnel, materials and funding. Businesses entering into the "Adopt a Municipality Program" shall not seek reimbursement for any donation of time, money, materials or personnel from the State or any subdivision thereof.

d. Contributions provided under this section by local businesses shall in no way affect the amount of State aid to which a municipality is entitled.

e. Acceptance of services, personnel, material or funding by a municipality pursuant to the "Adopt a Municipality Program" shall be subject to the applicable provisions, if any, of the "Local Government Ethics Law," P.L.1991, c.29 (C.40A:9-22.1 et seq.) and the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

C.52:14B-25 Definitions relative to certain mandate requirements, procedures for small municipalities.

13. a. For the purposes of this section:

"State mandate" means a program, service or activity that is to be performed or implemented by a local unit for or on behalf of its residents, which results in an added net cost to the local unit, and which is mandated in any statute enacted by the Legislature either prior to or after the effective date of this act. A "state mandated program" shall not include the following: any activity pertaining to a statute carrying criminal penalties; any mandate required by or arising from a court order or judgment; any program or service which is provided at local option under permissive State laws, rules, regulations or orders; any program which is required by private, special or local laws pursuant to Article IV, Section VII, paragraphs 8 and 10 of the State Constitution; any program required by or arising from an executive order of the Governor in exercising emergency powers granted by law; or any program mandated by federal law, rule, regulation or order.

"Small municipality" shall mean a municipality that has a limited population or geographic area according to criteria promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.

b. In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small municipalities. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;

(2) The use of performance rather than design standards; and

(3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

c. In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each State mandate flexibility analysis shall contain:

(1) An estimate of the number of small municipalities to which the proposed rule will apply;

(2) A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;

(3) An estimate of the annual cost to a small municipality of complying with the rule; and

(4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

d. This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

e. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

f. In complying with the provisions of this section, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

Repealer.

14. N.J.S.40A:9-59 is repealed.

15. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 343

AN ACT establishing the New Jersey Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs, supplementing chapter 4 of Title 18A of the New Jersey Statutes, and making an appropriation.

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

C.18A:4-42 Findings, declarations relative to Italian heritage and cultural and educational programs.

1. The Legislature finds and declares that:

a. For the past several decades Hollywood and the communications media have continuously portrayed Italians and Americans of Italian heritage as mobsters, buffoons and other nefarious characters to such an extent that it appears to be an orchestrated program of cultural dismemberment and disdain which can and will promote ethnic bigotry and loss of cultural identity.

b. The exposure of our children and others to this unrelenting barrage of negative images has led to the erosion and denigration of Italian-American culture, history and heritage. It has, furthermore, encouraged children to emulate negative role models and promoted the social acceptability of disrespect for and bigotry towards Italians and Americans of Italian heritage and their culture, history and heritage--a culture, history and heritage shared by over 22 percent of New Jersey's population.

c. The histories of our nation and our State have been significantly enriched by the heritage of Italians and Americans of Italian heritage. The cultural heritage of Italy includes the classical civilization of Rome, the fine arts of the Renaissance, the scientific and artistic genius of Da Vinci, the literary works of Dante and Petrarch, the operas of Verdi and Puccini and many other contributions that have ennobled civilization.

d. More than 5.4 million Italians emigrated to the United States between the years 1820 and 1991; today more than 2 million citizens of this State are of Italian descent. Our nation and our State have benefitted substantially from the influences and contributions of these men, women and children and their distinctive culture, history and heritage.

e. It is desirable to educate our citizens about the positive aspects of the culture, music, art, language, history and heritage of Italians and Americans of Italian heritage.

f. It is the policy of the State of New Jersey that the culture, history and heritage of Italians and Americans of Italian heritage are a proper concern for all people, particularly students enrolled in the schools of this State.

g. It is appropriate and desirable that programs, workshops, institutes, seminars and other teacher-training activities for the study of the culture, history and heritage of Italians and Americans of Italian heritage be conducted at the various high schools and institutions of higher education in this State.

h. It is fitting and proper to establish a permanent State-level commission to survey, design, encourage and promote the implementation of Italian and Americans of Italian heritage cultural and educational programs in this State, with responsibility for the coordination of events that will provide appropriate awareness and memorialization of the culture, history, heritage and language of Italians and Americans of Italian heritage on a regular basis throughout the State.

C.18A:4-43 New Jersey Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs.

2. a. The New Jersey Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs is created and established in the Executive Branch of the State Government. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated within the Department of Education, but notwithstanding

this allocation, the commission shall be independent of any supervision or control by the department or any board or officer thereof.

The commission shall consist of 21 members, including the Commissioner of Education and the chair of the executive board of the Presidents' Council, serving *ex officio*, and 19 public members.

Public members shall be appointed as follows: five public members shall be appointed by the President of the Senate, at least one of whom shall have a Masters' degree in an area of Italian studies or language; five public members shall be appointed by the Speaker of the General Assembly, at least one of whom shall have a Masters' degree in an area of Italian studies or language; and nine public members shall be appointed by the Governor, no less than four of whom shall at the time of their appointment have at least a Masters' degree in an area of Italian studies or language. The public members shall be residents of the State who have served prominently as spokespersons for, or as leaders of, organizations in the Italian and Americans of Italian heritage community which serve members of religious, ethnic, national heritage or social groups or who are experienced in the field of Italian and Americans of Italian heritage education. To the greatest extent practicable, they shall be chosen with due regard to afford the commission with broad regional representation and ethnic diversity. At least one-half of the public members shall be of Italian descent.

b. Each public member of the commission shall serve for a term of three years, except that of the initial members so appointed: one member appointed by the President of the Senate, one member appointed by the Speaker of the General Assembly and two members appointed by the Governor shall serve for terms of one year; two members appointed by the President of the Senate, two members appointed by the Speaker of the General Assembly and three members appointed by the Governor shall serve for terms of two years; and two members appointed by the President of the Senate, two members appointed by the Speaker of the General Assembly and four members appointed by the Governor shall serve for terms of three years. Public members shall be eligible for reappointment. They shall serve until their successors are appointed and qualified, and the term of the successor of any incumbent shall be calculated from the expiration of the term of that incumbent. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

c. The members of the commission shall serve without compensation, but they shall be entitled to reimbursement for all necessary expenses incurred in the performance of their duties.

d. The commission annually shall elect a chairman from among its members. It shall meet upon the call of the chairman or of a majority of the commission members. The presence of a majority of the authorized membership of the commission shall be required for the conduct of official business.

e. The commission shall appoint an executive director, who shall serve at its pleasure and shall be a person qualified by training and experience to perform the duties of the office.

C.18A:4-44 Responsibilities, duties of commission.

3. The commission shall have the following responsibilities and duties:

a. To provide, based upon the collective knowledge and experience of its members, assistance and advice to the public and nonpublic schools of this State with respect to the implementation of Italian and Americans of Italian heritage cultural and educational programs;

b. To meet with county and local school officials and other interested public and private organizations, for the purpose of assisting with the planning, coordination or modification of courses of study dealing with issues, matters and subjects concerning or relating to the culture, history and heritage of Italians and Americans of Italian heritage;

c. To survey and catalog the extent and breadth of Italian and Americans of Italian heritage cultural awareness and educational programs presently being incorporated into the curricula and taught in the school systems of this State; to inventory those Italian and Americans of Italian heritage exhibits and resources which may be incorporated into courses of study at various locations throughout the State and, upon request, to assist the State Department of Education and other educational agencies in the development and implementation of Italian and Americans of Italian heritage cultural awareness and educational programs. In furtherance of this responsibility, the commission shall be authorized to contact and cooperate with existing Italian and Americans of Italian heritage public or private nonprofit resource organizations and may act as a liaison concerning issues and topics involving and relating to the culture, history and heritage of Italians and Americans of Italian

heritage to members of the United States Senate and House of Representatives and the New Jersey Senate and General Assembly;

d. To compile a roster of individual volunteers who are willing to share their knowledge and experience in classrooms, seminars and workshops on subjects concerning and relating to the culture, history and heritage of Italians and Americans of Italian heritage. These volunteers may be scholars, clergymen, community relations professionals and other persons who, by virtue of their experience, training or interest, have acquired personal or academic knowledge of the culture, history and heritage of Italians and Americans of Italian heritage and who are willing to share that knowledge with students and teachers;

e. To coordinate events observing the culture, history and heritage of Italians and Americans of Italian heritage and to seek volunteers who are willing and able to participate in commemorative events that will enhance student awareness of the significance of the culture, history and heritage of Italians and Americans of Italian heritage;

f. To prepare reports for the Governor and the Legislature regarding its findings and recommendations to facilitate the inclusion of Italian and Americans of Italian heritage studies and special programs memorializing the culture, history and heritage of Italians and Americans of Italian heritage in the educational system of this State; and

g. To develop, in consultation with the State Department of Education, curriculum guidelines for the teaching of subjects and topics concerning and relating to the culture, history and heritage of Italians and Americans of Italian heritage. To the greatest extent practicable, each board of education shall incorporate those guidelines as part of the curriculum for its district's elementary and secondary school students.

C.18A:4-45 Assistance to commission.

4. a. The commission is authorized to call upon any department, office, division or agency of the State, or of any county, municipality or school district of the State, to supply such data, program reports and other information, personnel and assistance as it deems necessary to discharge its responsibilities under this act.

b. These departments, offices, divisions and agencies shall, to the extent possible, and not inconsistent with any other law of this State, cooperate with the commission and shall furnish it with such

information, personnel and assistance as may be necessary or helpful to accomplish the purposes of this act.

C.18A:4-46 Duties of commission relative to Institute of Italian and Italian American Heritage Studies.

5. a. The commission shall create, establish and oversee the Institute of Italian and Italian American Heritage Studies as an entity whose purpose is to assist the commission in implementation of its responsibilities as identified in section 3 of this act, P.L.2001, c.343 (C.18A:4-44). The commission shall function as the board of governors for the institute. The commission shall appoint an executive director of the institute who shall serve at its pleasure.

b. The commission shall survey the New Jersey four-year universities and colleges that have an advanced degree program in the fields of Italian and/or Italian American studies and select one to serve as host to the institute. The institute shall not be administered by the college or university selected as the host site. The institute will collaborate with and otherwise engage, share and exchange resources with the higher education community of New Jersey and work to establish mutually beneficial public service programs and activities consistent with the mission of the commission.

c. The institute shall have the authority to raise private funds and obtain public funds to be used toward scholarships, grants and studies in the field of Italian and/or Italian American studies.

d. The commission shall appoint an Advisory Council to the commission and institute. The advisory council shall consist of individuals who have served prominently as spokespersons for, or as leaders of, organizations in the Italian and Americans of Italian heritage community which serve members of religious, ethnic, national heritage or social groups or who are experienced in the field of Italian and Americans of Italian heritage education.

6. There is appropriated from the General Fund \$250,000 to the Department of Education to enable the Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs to effectuate the purposes of this act.

7. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 344

AN ACT concerning county-based multidisciplinary teams and amending P.L. 1998, c.19.

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

1. Section 6 of P.L.1998, c.19 (C.9:6-8.104) is amended to read as follows:

C.9:6-8.104 Establishment, maintenance of county-based multidisciplinary teams; "child advocacy center" defined.

6. Regional centers shall act as a resource in the establishment and maintenance of county-based multidisciplinary teams which work in conjunction with the county prosecutor and the Division of Youth and Family Services in the investigation of child abuse and neglect in the county in which the child who is undergoing evaluation and treatment resides. The Commissioner of Human Services, in consultation with the New Jersey Task Force on Child Abuse and Neglect, shall establish standards for a county team. The county team shall consist of representatives of the following disciplines: law enforcement; child protective services; mental health; substance abuse identification and treatment; and medicine; and, in those counties where a child advocacy center has been established, shall include a staff representative of a child advocacy center, all of whom have been trained to recognize child abuse and neglect. The county team shall provide: facilitation of the investigation, management and disposition of cases of criminal child abuse and neglect; referral services to the regional diagnostic center; appropriate referrals to medical and social service agencies; information regarding the identification and treatment of child abuse and neglect; and appropriate follow-up care for abused children and their families.

As used in this section, "child advocacy center" means a county-based center which meets the standards for a county team established by the commissioner pursuant to this section and demonstrates a multidisciplinary approach in providing comprehensive, culturally competent child abuse prevention, intervention and treatment services to children who are victims of child abuse or neglect.

2. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 345

AN ACT requiring the State to sell and convey to Morris County a portion of Greystone Park Psychiatric Hospital property.

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

1. a. (1) The portions, located as described in paragraph (2) of this subsection, of the 671± acres of real property, including the improvements thereon, owned by the State, known as the Greystone Park Psychiatric Hospital, are hereby declared to be surplus to the needs of the hospital and the State and are deemed appropriate and usable for preservation, recreation, or conservation purposes, as well as for the provision of services to the public by local governmental or private not-for-profit entities. The Attorney General is hereby authorized to sell and convey all of the State's interest in those portions of real property, and improvements thereon, owned by the State to the County of Morris, in accordance with the provisions and schedule set forth in this section. During the period ending six months after the effective date of this act, the county shall be permitted, before entering into any agreement for the sale and conveyance of such property interest, to enter upon the real property for the purpose of examining and evaluating the condition thereof, and the State shall provide the county at its request with any information or other assistance reasonably necessary for the conduct of that examination and evaluation. The sale and conveyance of this property is declared to be in the best interests of the State.

(2) The portions of real property and improvements thereon to be sold and conveyed pursuant to paragraph (1) of this subsection shall be those designated on the map thereof prepared by the Office of the County Engineer of the County of Morris and generally meeting the following descriptions:

(a) A portion located in the southeast area of the Greystone Park Psychiatric Hospital property between Old Dover Road and Central Avenue and between Central Avenue and West Hanover Avenue, but not including these roads, and bounded, at one end, by as straight a line as is geographically possible, from West Hanover Avenue to Old Dover Road perpendicular to the terminus of Central Avenue in front of the building known as the Main Building, but not including the buildings known as North Cottage and South Cottage, and bounded, at the other end, by another line as straight as is geographi-

cally possible approximately parallel to the previous straight line from West Hanover Avenue to Old Dover Road following the line of Collins Road, but not including Collins Road or the improvements known as the Waste Water Treatment Facility, including, but not limited to, on the west side of Central Avenue the improvements known as the Nurses' Residences and Employees' Residences and associated structures, and on the east side of Central Avenue the improvements known as the Clinic Building, Employees' Cafeteria Building, Curry Building, Central Avenue Complex (medical services building) and the Executive and other Residences and associated structures; and

(b) A portion located in the northeastern area of the Greystone Park Psychiatric Hospital property, bounded by a line beginning from the point at which Old Dover Road intersects the existing southeasterly property line, and following the existing easterly property line to the point at which it intersects the northerly portion of Old Dover Road, then following westerly along Old Dover Road to a point opposite the mid-point of Block 14, Lot 21, then southerly in a straight line at an angle of approximately 120 degrees for a distance of approximately 1,810 feet, then westerly at an angle of approximately 67 degrees for a distance of approximately 770 feet, then southerly at an angle of approximately 90 degrees to Old Dover Road, and then along the northerly edge of Old Dover Road to the first point.

If the description of either portion of land, as set forth in the foregoing provisions of this paragraph, varies from the designation of that portion as it appears on the map, the Attorney General, in consultation with the governing body of the County of Morris, is authorized and directed, in preparing the instrument of conveyance, to conform the instrument's description of that portion to the designation indicated by the map.

b. (1) The deed conveying the property described in subsection a. of this section from the State to the County of Morris shall contain appropriate restrictions limiting the use of the property for preservation, recreation, or conservation purposes, but also permitting use for the purpose of providing services to the public by local governmental or private not-for-profit entities simultaneously with the use of the property for preservation, recreation, or conservation purposes. Upon the conveyance, the County of Morris shall agree to assume responsibility for the preservation, management and maintenance of the property and to provide public access thereto.

(2) (a) Prior to the execution of the sale and conveyance of the property described in subsection a. of this section, the State shall conduct a review and determination of any abatement of hazardous materials or remediation of environmental conditions that would be required on the property both if the land, buildings and structures are to be restored to habitable use and if the buildings and structures are to be demolished. A written report of this review and determination shall be submitted to the County of Morris upon completion. The review shall be completed within 90 days following the effective date of this act.

(b) If the report contains a determination that abatement or remediation is needed, the State and the County of Morris shall enter into a written agreement, prior to the execution of the sale and conveyance, as to which entity shall be responsible for the abatement or remediation, and the schedule for the abatement and remediation to be undertaken and completed by the State, if any, before the sale and conveyance or after.

(c) The property shall be conveyed to the County of Morris in an "as is" condition with no responsibility assumed or expenditure made by the State prior to, or as a condition of, the execution of the sale or conveyance, unless otherwise provided in a written agreement between the State and the County of Morris prior to the execution of the sale and conveyance, for any repair, reconstruction or renovation of the land, buildings or structures made necessary due to ordinary or extraordinary use, wear and tear, neglect, deterioration due to exposure to the elements, vandalism, or age, or for any infrastructure, habitability, life safety or building code upgrade or improvement to, nor any demolition on, the property. The State may assume responsibility for and make expenditure for such repair, reconstruction, renovation, upgrade or improvement if such is an integral part of any abatement or remediation to be undertaken and completed by the State in accordance with a written agreement entered into pursuant to subparagraph (b) of this paragraph.

c. The Attorney General shall be responsible for ensuring implementation with this act and for the expeditious execution of the sale and conveyance of the property described in subsection a. of this section in accordance with the schedule set forth in subsection e. of this section. The necessary documents required for the execution of the sale and conveyance, including any written agreements provided for in this section, shall be prepared by the Attorney General.

d. (1) The conveyance of the property described in subsection a. of this section shall be made free of all liens and other claims by third parties which adversely affect good and marketable title.

(2) The consideration to be paid to the State by the County of Morris for the sale and conveyance shall be the sum of one dollar, which shall be deposited into the State General Fund.

(3) The execution of the sale and conveyance shall include such easements, at no cost, for both the State across and unto the property being sold and conveyed and the County of Morris across and unto property owned by the State and adjacent to the property being sold and conveyed, as may be necessary for effective and practical use by both the State and county for their respective purposes.

e. (1) Within 90 days following the effective date of this act, the Attorney General shall obtain a survey and inventory of the property described in subsection a. of this section necessary for the proper conveyance.

(2) If the property to be sold and conveyed is being used for the purposes of the hospital or State government on the effective date of this act, the execution of the sale and conveyance of that section in use may be delayed, but in no event longer than one year following the effective date of this act. If delay in the execution is necessary, the property shall be divided, into several sections but no more than three sections if necessary to ensure the efficacy of the conveyance, so that the section that is being used for hospital or State purposes is segregated from the whole for sale and conveyance at a later date.

(3) The County of Morris and the Attorney General may enter into a written agreement to extend, in whole or in part, the schedule provided for in this section for the sale and conveyance. If no such agreement is entered into prior to the 180th day following the effective date of this act, the schedule set forth in this section shall be implemented.

f. (1) Notwithstanding the provisions of P.L.1999, c.188 specifically or any other law, rule, or regulation to the contrary, the sale and conveyance described in this act shall not require the approval of the Department of the Treasury, Department of Human Services or the State House Commission, nor shall the sale and conveyance require any further approval of the Legislature.

(2) With respect to the Greystone Park Psychiatric Hospital property not conveyed under the provisions of subsection a. of this act, no portion of that property shall be used for any purpose other than (a) recreation and conservation, historic preservation, or

farmland preservation, or (b) the administration of programs and the provision of services by the Department of Human Services.

2. This act shall take effect immediately.

Approved January 5, 2002.

CHAPTER 346

AN ACT concerning eligibility for small employer health benefits plans and amending P.L.1992, c.162.

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

1. Section 8 of P.L.1992, c.162 (C.17B:27A-24) is amended to read as follows:

C.17B:27A-24 Reasonable specified minimum participation.

8. Any small employer carrier may require a reasonable specified minimum participation of eligible employees, which shall not exceed 75%, or reasonable minimum employer contributions in determining whether to accept a small group pursuant to this act. The standards so established by the carrier shall be first approved by the board and shall be applied uniformly to all small groups, except that in no event shall a carrier require an employer to contribute more than 10% to the annual cost of the policy or contract, or an amount as otherwise provided by the board, and any minimum participation standards established by the carrier shall be reasonable. In establishing the percentage of employee participation, a one-to-one credit shall be given for each employee covered by a spouse's health benefits coverage, Medicare or another group health benefits plan. In calculating an employer's participation, the carrier shall include all insured employees, regardless of whether the employees chose an indemnity plan or a health maintenance organization, or a combination thereof.

2. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 347

AN ACT concerning urban enterprise zones and enterprise zone-impacted business districts, amending and supplementing P.L.1983, c.303 (C.52:27H-60 et seq.).

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

1. Section 2 of P.L.1983, c.303 (C.52:27H-61) is amended to read as follows:

C.52:27H-61 Legislative findings, determinations.

2. The Legislature finds and determines:

a. That there persist in this State, particularly in its urban centers, areas of economic distress characterized by high unemployment, low investment of new capital, blighted conditions, obsolete or abandoned industrial or commercial structures, and deteriorating tax bases.

b. That the severe and persistent deterioration of these areas demands vigorous and coordinated efforts by private and public entities to restore their prosperity and enable them to resume significant contributions to the economic and social life of the State.

c. That the economic revitalization of these areas requires application of the skills and entrepreneurial vigor of private enterprise; and it is the responsibility of government to provide a framework within which encouragement be given to private capital investment in these areas, disincentives to investment be removed or abated, and mechanisms be provided for the coordination and cooperation of private and public agencies in restoring the economic viability and prosperity of these areas.

d. That certain urban areas which continue to experience high levels of unemployment should be able to continue to receive the aforementioned assistance and incentives necessary to promote economic revitalization of those areas.

e. That a business district with urban enterprise zones adjacent to it on two or more sides can be negatively impacted because the businesses in the adjacent enterprise zones are permitted to collect 50% less sales tax and thus have a significant advantage in competition for customers. The impacted business district can become economically distressed because there is a disincentive to businesses to invest in or stay in that business district.

2. Section 3 of P.L.1983, c.303 (C.52:27H-62) is amended to read as follows:

C.52:27H-62 Definitions.

3. As used in this act:

a. "Enterprise zone" or "zone" means an urban enterprise zone designated by the authority pursuant to this act;

b. "Authority" means the New Jersey Urban Enterprise Zone Authority created by this act;

c. "Qualified business" means any entity authorized to do business in the State of New Jersey which, at the time of designation as an enterprise zone or a UEZ-impacted business district, is engaged in the active conduct of a trade or business in that zone or district; or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone or district and has at least 25% of its full-time employees employed at a business location in the zone or district, meeting one or more of the following criteria:

(1) Residents within the zone, the district, within another zone or within a qualifying municipality; or

(2) Unemployed for at least six months prior to being hired and residing in New Jersey, and recipients of New Jersey public assistance programs for at least six months prior to being hired, or either of the aforesaid; or

(3) Determined to be low income individuals pursuant to the Workforce Investment Act of 1998, Pub. L. 105-220 (29 U.S.C. s.2811);

d. "Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of P.L.1983, c.303 (C.52:27H-73), an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that any municipality which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) shall qualify if its municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Planning and Analysis of the State Department of Labor. In addition to those municipalities that qualify pursuant to the criteria set forth

above, that municipality accorded priority designation pursuant to subsection e. of section 7 of P.L.1983, c.303 (C.52:27H-66), that municipality set forth in paragraph (7) of section 3 of P.L.1995, c.382 (C.52:27H-66.1) and the municipalities in which the three additional enterprise zones, including the joint enterprise zone, are to be designated pursuant to criteria according priority consideration for designation of the zones pursuant to section 12 of P.L.2001, c.347 (C.52:27H-66.7) shall be deemed qualifying municipalities;

e. "Public assistance" means income maintenance funds administered by the Department of Human Services or by a county welfare agency;

f. "Zone development corporation" means a nonprofit corporation or association created or designated by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of P.L.1983, c.303 (C.52:27H-68) and to prepare, monitor, administer and implement the zone development plan;

g. "Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality;

h. "Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to this act; which is organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes; and which has for its principal purpose the encouragement and support of community activities within, or on behalf of, the zone so as to (1) stimulate economic activity, (2) increase or preserve residential amenities, or (3) otherwise encourage community cooperation in achieving the goals of the zone development plan;

i. "Enterprise zone assistance fund" or "assistance fund" means the fund created by section 29 of P.L.1983, c.303 (C.52:27H-88); and

j. "UEZ-impacted business district" or "district" means an economically-distressed business district classified by the authority as having been negatively impacted by two or more adjacent urban enterprise zones in which 50% less sales tax is collected pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80).

C.52:27H-66.2 "UEZ-impacted business district."

3. The authority shall designate a classification known as a "UEZ-impacted business district" for a municipality which can demonstrate to the authority that its business district is economically distressed and is being negatively impacted by the presence of two or more adjacent enterprise zones in which 50% less sales tax is collected pursuant to section 21 of P.L. 1983, c. 303 (C.52:27H-80).

C.52:27H-66.3 Application for classification of UEZ-impacted business district.

4. a. A municipality shall apply to the authority for the classification of UEZ-impacted business district by submitting an application as required by the authority along with detailed findings made after a public hearing that the business district is economically distressed and that the adjacent enterprise zones are having a negative impact upon the municipality's business district.

b. In according consideration for designation of the UEZ-impacted business district classification authorized pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2), the following criteria shall be utilized by the authority:

(1) the district shall be located in a municipality which is between two municipalities each of which has an enterprise zone; and

(2) the borders of the two enterprise zones of the adjacent municipalities shall in part be contiguous to the border of the applicant municipality.

C.52:27H-66.4 UEZ-impacted business district, tax exemption for qualified businesses.

5. a. A qualified business within a UEZ-impacted business district authorized pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2) shall be entitled to an exemption to the extent of 50% from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) in accordance with section 21 of the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-80) to the same extent as that granted to qualified businesses in the adjacent enterprise zones provided that the qualified business applies to the Director of the Division of Taxation in the Department of the Treasury for certification pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80), meets the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-86), and satisfies the annual certification requirements of section 28 of P.L.1983, c.303 (C.52:27H-87).

b. The reduced rate revenues authorized by this section and received from the taxation of retail sales made by qualified businesses in the UEZ-impacted business district shall be deposited in the General Fund and not allocated in accordance with section 21 of the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-80), to the enterprise zone assistance fund.

c. Other than the reduction in sales tax rate provided to qualified businesses pursuant to this section, no tax credits, incentives, programs or other benefits of the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), shall be available to businesses in the district as a result of a UEZ-impacted business district designation.

C.52:27H-66.5 Review of designation as UEZ-impacted business district.

6. When the duration of one or more of the enterprise zones adjacent to the UEZ-impacted business district expires but the UEZ-impacted business district continues to be adjacent to one or more remaining enterprise zones, the authority shall review the designation of the UEZ-impacted business district. If upon conducting a hearing, the authority finds that the business district continues to be economically distressed and negatively impacted by the remaining adjacent enterprise zone, the UEZ-impacted business district designation shall be continued. The designation of UEZ-impacted business district shall terminate automatically when the duration of the last enterprise zone adjacent to the district ends.

7. Section 4 of P.L.1983, c.303 (C.52:27H-63) is amended to read as follows:

C.52:27H-63 New Jersey Urban Enterprise Zone Authority.

4. a. There is created the New Jersey Urban Enterprise Zone Authority, which shall consist of:

(1) The Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, who shall be chairman of the authority;

(2) The Commissioner of the Department of Community Affairs;

(3) The Commissioner of the Department of Labor;

(4) The State Treasurer; and

(5) Five public members not holding any other office, position or employment in the State Government, nor any local elective office, who shall be appointed by the Governor with the advice and consent of the Senate, and who shall be qualified for their appointments by training and experience in the areas of local government

finance, economic development and redevelopment, or volunteer civic service and community organization. No more than three public members shall be of the same political party. At least one public member of the authority shall reside within an enterprise zone; however, the provisions of this section shall apply only to members appointed or reappointed after the effective date of P.L.2001, c.347 (C.52:27H-66.2 et al.).

b. The public members of the authority shall serve for terms of five years, except that of the members first appointed, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, one shall serve for a term of four years, and one shall serve for a term of five years. Vacancies in the public membership shall be filled in the manner of the original appointments but for the unexpired terms.

c. An ex officio member of the authority may, from time to time, designate in writing to the authority an official within his respective department to attend and represent the department at the meetings of the authority from which the ex officio member is absent, and that designated representative shall be entitled to vote and otherwise act for the ex officio member at those meetings.

8. Section 7 of P.L.1983, c.303 (C.52:27H-66) is amended to read as follows:

C.52:27H-66 Designation of enterprise zones.

7. The authority shall designate enterprise zones from among those areas of qualifying municipalities determined to be eligible pursuant to this act. No more than 30 enterprise zones shall be in effect at any one time. No more than one enterprise zone shall be designated in any one municipality. Except as otherwise provided by section 11 of P.L.2001, c.347 (C.52:27H-66.6), any designation granted shall be for a period of 20 years, beginning with the year in which a zone is eligible for an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), and shall not be renewed at the end of that period. In designating enterprise zones the authority shall seek to avoid excessive geographic concentration of zones in any particular region of the State. At least six of the 10 additional enterprise zones authorized pursuant to section 3 of P.L.1993, c.367 shall be located in counties in which enterprise zones have not previously been designated and shall be designated within 90 days of the date of the submittal of an application and zone development plan. The authority shall accept applications within 90 days of the effective

date of P.L.1993, c.367. Notwithstanding the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.) to the contrary, the six additional enterprise zones to be designated by the authority pursuant to the criteria for priority consideration in this section shall be entitled to an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The following criteria shall be utilized in according priority consideration for designation of these zones by the authority:

a. One zone shall be located in a county of the second class with a population greater than 595,000 and less than 675,000 according to the latest federal decennial census and shall be located in the qualifying municipality in that county with the highest annual average number of unemployed persons and the highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor;

b. Two zones shall be located in a county of the second class with a population greater than 445,000 and less than 455,000 according to the latest federal decennial census, one of which shall be located in the qualifying municipality in that county with the highest annual average number of unemployed persons and the highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor, and one of which shall be located in the qualifying municipality in that county with the second highest annual average number of unemployed persons and the second highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor;

c. One zone shall be located in a county of the third class with a population greater than 84,000 and less than 92,000 according to the latest federal decennial census and shall be located in the qualifying municipality in that county with the highest annual average number of unemployed persons and the highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor;

d. One zone shall be located within two noncontiguous qualifying municipalities but comprised of not more than two noncontiguous areas each having a continuous border, if:

(1) both municipalities are located in the same county which shall be a county of the fifth class with a population greater than 500,000 and less than 555,000 according to the latest federal decennial census;

(2) the two municipalities submit a joint application and zone development plan; and

(3) each of the municipalities has a population greater than 16,000 and less than 30,000 and a population density of more than 5,000 persons per square mile, according to the latest federal decennial census; and

e. One zone shall be located within a municipality having a population greater than 38,000 and less than 46,000 according to the latest federal decennial census if the municipality is located within a county of the fifth class with a population greater than 340,000 and less than 440,000 according to the latest federal decennial census.

9. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to read as follows:

C.52:27H-80 Sales tax exemption for retail sales.

21. Receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages as defined in the "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), of manufacturing machinery, equipment or apparatus, and of energy, made by a certified vendor from a place of business owned or leased and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2), are exempt to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

Any vendor, which is a qualified business having a place of business located in a designated enterprise zone or in a designated UEZ-impacted business district, may apply to the Director of the Division of Taxation in the Department of the Treasury for certification pursuant to this section. The director shall certify a vendor if he shall find that the vendor owns or leases and regularly operates a place of business located in the designated enterprise zone or in the designated UEZ-impacted business district for the purpose of making retail sales, that items are regularly exhibited and offered for retail sale at that location, and that the place of business is not utilized primarily for the purpose of catalogue or mail order sales. The certification under this section shall remain in effect during the time the business retains its status as a qualified business meeting the eligibility criteria of section 27 of P.L.1983, c.303

(C.52:27H-86). However, the director may at any time revoke a certification granted pursuant to this section if he shall determine that the vendor no longer complies with the provisions of this section.

Notwithstanding the provisions of this act to the contrary, except as may otherwise be provided by section 7 of P.L.1983, c.303 (C.52:27H-66), the authority may, in its discretion, determine whether or not the provisions of this section shall apply to any enterprise zone designated after the effective date of P.L.1985, c.142 (C.52:27H-66 et al.); provided, however, that the authority may make such a determination only where the authority finds that the award of an exemption of 50 percent of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any adverse economic impact upon any other urban enterprise zone.

Notwithstanding any other provisions of law to the contrary, except as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1E-116.6), after first depositing 10 percent of the gross amount of all revenues received from the taxation of retail sales made by certified vendors from business locations in designated enterprise zones to which this exemption shall apply into the account created in the name of the authority in the enterprise zone assistance fund pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88), the remaining 90 percent shall be deposited immediately upon collection by the Department of the Treasury, as follows:

a. In the first five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, all such revenues shall be deposited in the enterprise zone assistance fund created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

b. In the second five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, 66 2/3% of all those revenues shall be deposited in the enterprise zone assistance fund, and 33 1/3% shall be deposited in the General Fund;

c. In the third five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, 33 1/3% of all those revenues shall be deposited in the enterprise zone assistance fund, and 66 2/3% shall be deposited in the General Fund;

d. In the final five-year period during which the State shall have collected reduced rate revenues within an enterprise zone, but not to exceed the life of the enterprise zone, all those revenues shall be deposited in the General Fund.

Commencing on the effective date of P.L.1993, c.144, all revenues in any enterprise zone to which the provisions of this section have been extended prior to the enactment of P.L.1993, c.144 shall be deposited into the enterprise zone assistance fund until there shall have been deposited all revenues into that fund for a total of five full years, as set forth in subsection a. of this section. The State Treasurer then shall proceed to deposit funds into the enterprise zone assistance fund according to the schedule set forth in subsections b. through d. of this section, beginning at the point where the enterprise zone was located on that schedule on the effective date of P.L.1993, c.144. No enterprise zone shall receive the deposit benefit granted by any one subsection of this section for more than five cumulative years.

The revenues required to be deposited in the enterprise zone assistance fund under this section shall be used for the purposes of that fund and for the uses prescribed in section 29 of P.L.1983, c.303 (C.52:27H-88), subject to annual appropriations being made for those purposes and uses.

10. Section 27 of P.L.1983, c.303 (C.52:27H-86) is amended to read as follows:

C.52:27H-86 Eligibility for incentives.

27. To be eligible for any of the incentives provided under this act a qualified business must demonstrate to the satisfaction of the authority that:

a. The business will create new employment in the municipality;

b. The business will not create unemployment in other areas of the State, including the municipality in which the zone or UEZ-impacted business district is located.

c. For the purposes of eligibility for the incentives provided under sections 17, 19, 20, and 21 of P.L.1983, c.303 (C.52:27H-76, 52:27H-78, 52:27H-79, and 52:27H-80, respectively), a qualified business shall not be required to meet the requirements of subsection a. of this section, if:

(1) At the time of designation of the enterprise zone or at the time zone designation is extended by expansion to the location of a business or at the time of designation of the UEZ-impacted business district, the qualified business had been engaged in the active conduct of a trade or business in that zone or in the added area of that zone or in that district for at least one year prior to that designation or expansion;

(2) The qualified business employs fewer than 50 employees; and
(3) The qualified business has entered into an agreement, approved by the authority, with the governing body of the qualifying municipality in which the enterprise zone is located or the municipality where the UEZ-impacted business district is located, under which the qualified business agrees to undertake an investment in the enterprise zone or district in lieu of the employment of new employees. An investment permitted under an agreement shall be in an amount and of a nature which the municipal governing body and the authority find shall contribute substantially to the economic attractiveness of the enterprise zone or district, and may include, but shall not be limited to:

(a) The improvement of the exterior appearance or customer facilities of the property constituting the place of business of the qualified business within the zone or district; provided that the improvement is of a permanent nature and not required to meet existing ordinances or code regulations; or

(b) Monetary contributions to the municipality to undertake improvements to increase the safety or attractiveness of the zone or district to businesses which may wish to locate there or to consumer visitors to the zone or district, including, but not limited to litter clean-up and control, landscaping, parking areas and facilities, recreational and rest areas and facilities, repair or improvements to public streets, curbing, sidewalks and pedestrian thoroughfares, street lighting, or increased police, fire or sanitation services in the enterprise zone or UEZ-impacted business district.

In order to meet the requirements of paragraph (3) of this subsection, an investment shall be in an amount no less than \$5,000.00 if the qualified business employs 10 or fewer employees, or if the qualified business employs more than 10 employees, not less than the amount produced by multiplying the number of employees employed by the qualified business by \$500.00. A qualified business shall be required to make an investment for each year the qualified business does not meet the requirements of subsection a. of this section. In order to receive the incentives permitted by this section, the business shall provide written evidence of the investment to the authority.

C.52:27H-66.6 Extension of designation, certain circumstances.

11. a. Notwithstanding the provisions of any law, rule, regulation or order to the contrary, the designation of an enterprise zone by the authority pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.), which

is located in a municipality in which the annual average of unemployed persons is equal to or greater than 2,000, or the municipal average annual unemployment rate exceeds the State average annual unemployment rate, or an enterprise zone which is located in a municipality contiguous to a municipality in which an enterprise zone is designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) and in which the annual average of unemployed persons is equal to or greater than 2,000 or the municipal average annual unemployment rate exceeds the State average annual unemployment rate, shall, following the expiration of the third five-year period during which the State shall have collected reduced rate revenues within the zone as provided in subsection c. of section 21 of P.L.1983, c.303 (C.52:27H-80), be extended by the authority, on a one-time basis, for a period of 16 years, within 90 days after the effective date of P.L.2001, c.347 (C.52:27H-66.2 et al.), or within 90 days after the expiration of that third five-year period, whichever is later.

b. During the 90-day period provided for in subsection a. of this section, the authority shall notify all qualified businesses in the enterprise zone that the benefits authorized by sections 16 through 20 of P.L.1983, c.303 (C.52:27H-75 through C.52:27H-79) shall be extended to qualified businesses in the enterprise zone commencing with the designation of the extended enterprise zone and continuing as long as a zone retains its designation as an extended enterprise zone.

c. Notwithstanding any other provisions of any law, rule or regulation to the contrary, 90 days after the expiration of the period provided for in subsection c. of section 21 of P.L.1983, c.303 (C.52:27H-80), except as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1E-116.6), and after first depositing 10 percent of the gross amount of all revenues received from the taxation of retail sales made by certified vendors from business locations in an extended enterprise zone designated pursuant to subsection a. of this section, to which this exemption shall apply into the account created in the name of the authority in the enterprise zone assistance fund pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88), the remaining 90 percent shall be deposited immediately upon collection by the Department of the Treasury, as follows:

(1) In the first five-year period during which the State shall have collected reduced rate revenues within the extended enterprise zone, all such revenues shall be deposited in the enterprise zone assistance

fund created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

(2) In the second five-year period during which the State shall have collected reduced rate revenues within the extended enterprise zone, 66 $\frac{2}{3}$ % of all those revenues shall be deposited in the enterprise zone assistance fund, and 33 $\frac{1}{3}$ % shall be deposited in the General Fund;

(3) In the third five-year period during which the State shall have collected reduced rate revenues within the extended enterprise zone, 33 $\frac{1}{3}$ % of all those revenues shall be deposited in the enterprise zone assistance fund, and 66 $\frac{2}{3}$ % shall be deposited in the General Fund;

(4) In the final year during which the State shall have collected reduced rate revenues within the extended enterprise zone, but not to exceed the life of the enterprise zone, all those revenues shall be deposited in the General Fund.

The revenues required to be deposited in the enterprise zone assistance fund under this section shall be used for the purposes of that fund and for the uses prescribed in section 29 of P.L.1983, c.303 (C.52:27H-88), subject to annual appropriations being made for those purposes and uses.

d. The designation as an extended enterprise zone pursuant to this section shall terminate if the authority determines that the municipality in which the zone is located fails to meet the criteria of subsection a. of this section for three consecutive years. Any enterprise zone which loses its designation as an extended enterprise zone pursuant to this subsection shall be eligible to re-apply to the authority for designation as an extended enterprise zone pursuant to the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.). If the authority approves its application, an urban enterprise zone designation may be extended to the applicant in accordance with the schedules set forth in P.L.1983, c.303 (C.52:27H-60 et seq.), beginning at the point where the enterprise zone was located on such schedules on the effective date of P.L.2001, c.347 (C.52:27H-66.2 et al.).

C.52:27H-66.7 Designation of three additional zones.

12. The three additional zones, authorized pursuant to P.L.2001, c.347 (C.52:27H-66.2 et al.), shall be designated within 90 days of the date of the submittal of an application and zone development plan, provided that the joint zone shall be designated within 90 days of the date of the submittal of a joint application and a joint zone development plan by the adjoining municipalities. The authority

shall accept applications within 90 days of the effective date of P.L.2001, c.347 (C.52:27H-66.2 et al.). Notwithstanding the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.) to the contrary, the additional enterprise zones to be designated by the authority pursuant to the criteria for priority consideration set forth in this section shall be entitled to an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The following criteria shall be utilized in according priority consideration for designation of the three additional enterprise zones authorized pursuant to P.L.2001, c.347 (C.52:27H-66.2 et al.):

a. (1) The joint zone shall be located in four municipalities which are adjacent to each other, one of which has a population greater than 5,000 and less than 5,500 according to the latest federal decennial census, one of which has a population greater than 4,000 and less than 4,500 according to the latest federal decennial census, one of which has a population greater than 3,000 and less than 4,000 according to the latest federal decennial census, and one of which has a population greater than 400 and less than 500 according to the latest federal decennial census; and

(2) The joint zone shall be located in a county of the sixth class according to the latest federal decennial census.

b. (1) The second zone shall be located in a municipality with a population greater than 60,000 and less than 65,000 according to the latest federal decennial census in a county of the first class with a population greater than 600,000 and less than 620,000 according to the latest federal decennial census; and

(2) The second zone shall be located in a municipality which is contiguous to at least one qualifying municipality which has a designated enterprise zone and which is in a county of the first class.

c. The third zone shall be located within a municipality that

(1) borders on another municipality having an urban enterprise zone;

(2) has a population greater than 20,000 and a population density greater than 7,500 persons per square mile according to the latest federal decennial census; and

(3) has a per capita retail sales rate that is less than \$2,500, as reported by the U.S. Bureau of the Census, 1992 Census of Retail.

13. This act shall take effect immediately, except that sections 3, 4, 5, 6 and 12 of this act shall take effect on the first day of the third month following enactment, but the State Treasurer, the Chief

Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, and the Executive Director of the New Jersey Urban Enterprise Zone Authority may take such anticipatory actions as may be necessary for the implementation of this act.

Approved January 6, 2002.

CHAPTER 348

AN ACT concerning county budget cap exceptions and supplementing chapter 4 of Title 40A of the New Jersey Statutes.

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

1. The Legislature finds and declares:

The proper management of solid waste is essential to the health, safety and welfare of the people of this State and it is in the public interest to assure safe, reliable, efficient and reasonably priced solid waste management services.

It is imperative that the State take appropriate action to authorize counties to implement measures which enable counties to continue to fund the implementation of comprehensive solid waste management plans in a manner which assures accountability to residents and businesses.

Due to the change in solid waste flow rules in 1997, many county solid waste operations were forced to reduce tipping fees in order to remain competitive with solid waste facilities located outside the State of New Jersey. These reductions in tipping fees have resulted in a loss of revenues to these county solid waste operations, with the potential to cause operational funding shortfalls.

Therefore, it is a matter of good public policy to address the issue of potential operational funding shortfalls by providing a means by which county governments can address the issue of funding shortfalls while maintaining stability in the county budget by permitting counties to fund the shortfalls through the county general fund with funds not subject to budget cap limits.

C.40A:4-45.4b Budget cap exception for solid waste reclamation utility.

2. Notwithstanding the provisions of section 4 of P.L.1976, c.68 (C.40A:4-45.4) to the contrary, amounts appropriated in a county budget pursuant to N.J.S.40A:4-35 related to the operation of a county solid waste reclamation utility shall not be subject to limits on increases in the county tax levy in any budget year.

3. This act shall take effect immediately and shall be retroactive to January 1, 2001.

Approved January 6, 2002.

CHAPTER 349

AN ACT concerning individual health benefits plans and amending and supplementing P.L.1992, c.161.

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

1. Section 1 of P.L.1992, c.161 (C.17B:27A-2) is amended to read as follows:

C.17B:27A-2 Definitions.

1. As used in sections 1 through 15, inclusive, of this act:

"Board" means the board of directors of the program.

"Carrier" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital or health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier.

"Church plan" has the same meaning given that term under Title I, section 3 of Pub.L.93-406, the "Employee Retirement Income Security Act of 1974" (29 U.S.C.s.1002(33)).

"Commissioner" means the Commissioner of Banking and Insurance.

"Community rating" means a rating system in which the premium for all persons covered by a contract is the same, based on the experience of all

persons covered by that contract, without regard to age, sex, health status, occupation and geographical location.

"Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following: a group health plan; a group or individual health benefits plan; Part A or Part B of Title XVIII of the federal Social Security Act (42 U.S.C. s.1395 et seq.); Title XIX of the federal Social Security Act (42 U.S.C. s.1396 et seq.), other than coverage consisting solely of benefits under section 1928 of Title XIX of the federal Social Security Act (42 U.S.C.s.1396s); Chapter 55 of Title 10, United States Code (10 U.S.C. s.1071 et seq.); a medical care program of the Indian Health Service or of a tribal organization; a State health plan offered under chapter 89 of Title 5, United States Code (5 U.S.C. 8901 et seq.); a public health plan as defined by federal regulation; and a health benefits plan under section 5(e) of the "Peace Corps Act" (22 U.S.C. s.2504(e)); or coverage under any other type of plan as set forth by the commissioner by regulation.

Creditable coverage shall not include coverage consisting solely of the following: coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit only insurance; coverage for on-site medical clinics; coverage, as specified in federal regulation, under which benefits for medical care are secondary or incidental to the insurance benefits; and other coverage expressly excluded from the definition of health benefits plan.

"Department" means the Department of Banking and Insurance.

"Dependent" means the spouse or child of an eligible person, subject to applicable terms of the individual health benefits plan.

"Eligible person" means a person who is a resident who is not eligible to be covered under a group health benefits plan, group health plan, governmental plan, church plan, or Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C.s.1395 et seq.).

"Federally defined eligible individual" means an eligible person: (1) for whom, as of the date on which the individual seeks coverage under P.L.1992, c.161 (C.17B:27A-2 et seq.), the aggregate of the periods of creditable coverage is 18 or more months; (2) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any such plan; (3) who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C.s.1395 et seq.), or a State plan under Title XIX of the Social Security Act (42 U.S.C.s.1396 et seq.) or any successor program, and who does not have

another health benefits plan, or hospital or medical service plan; (4) with respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud; (5) who, if offered the option of continuation coverage under the COBRA continuation provision or a similar State program, elected that coverage; and (6) who has elected continuation coverage described in (5) above and has exhausted that continuation coverage.

"Financially impaired" means a carrier which, after the effective date of this act, is not insolvent, but is deemed by the commissioner to be potentially unable to fulfill its contractual obligations, or a carrier which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Governmental plan" has the meaning given that term under Title I, section 3 of Pub.L.93-406, the "Employee Retirement Income Security Act of 1974" (29 U.S.C.s.1002(32)) and any governmental plan established or maintained for its employees by the Government of the United States or by any agency or instrumentality of that government.

"Group health benefits plan" means a health benefits plan for groups of two or more persons.

"Group health plan" means an employee welfare benefit plan, as defined in Title I, section 3 of Pub.L.93-406, the "Employee Retirement Income Security Act of 1974" (29 U.S.C. s.1002(1)), to the extent that the plan provides medical care, and including items and services paid for as medical care to employees or their dependents directly or through insurance, reimbursement, or otherwise.

"Health benefits plan" means a hospital and medical expense insurance policy; health service corporation contract; hospital service corporation contract; medical service corporation contract; health maintenance organization subscriber contract; or other plan for medical care delivered or issued for delivery in this State. For purposes of this act, health benefits plan shall not include one or more, or any combination of, the following: coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; stop loss or excess risk insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, as specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits. Health benefits plans shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise

not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and such other similar, limited benefits as are specified in federal regulations. Health benefits plan shall not include hospital confinement indemnity coverage if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health benefits plan maintained by the same plan sponsor, and those benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor. Health benefits plan shall not include the following if it is offered as a separate policy, certificate or contract of insurance: Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act (42 U.S.C.s.1395ss(g)(1)); and coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code (10 U.S.C. s.1071 et seq.); and similar supplemental coverage provided to coverage under a group health plan.

"Health status-related factor" means any of the following factors: health status; medical condition, including both physical and mental illness; claims experience; receipt of health care; medical history; genetic information; evidence of insurability, including conditions arising out of acts of domestic violence; and disability.

"Individual health benefits plan" means: a. a health benefits plan for eligible persons and their dependents; and b. a certificate issued to an eligible person which evidences coverage under a policy or contract issued to a trust or association, regardless of the situs of delivery of the policy or contract, if the eligible person pays the premium and is not being covered under the policy or contract pursuant to continuation of benefits provisions applicable under federal or State law.

Individual health benefits plan shall not include a certificate issued under a policy or contract issued to a trust, or to the trustees of a fund, which trust or fund is an employee welfare benefit plan, to the extent the "Employee Retirement Income Security Act of 1974" (29 U.S.C. s.1001 et seq.) preempts the application of P.L.1992, c.161 (C.17B:27A-2 et seq.) to that plan.

"Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Medical care" means amounts paid: (1) for the diagnosis, care, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body; and (2) transportation primarily for and essential to medical care referred to in (1) above.

"Member" means a carrier that issues or has in force health benefits plans in New Jersey. Member shall not include a carrier whose combined average Medicare, Medicaid, NJ FamilyCare and NJ KidCare enrollment represents more than 75% of its average total enrollment for all health benefits plans or whose combined Medicare, Medicaid, NJ FamilyCare and NJ KidCare net earned premium for the two-year calculation period represents more than 75% of its total net earned premium for the two-year calculation period.

"Modified community rating" means a rating system in which the premium for all persons covered by a contract is formulated based on the experience of all persons covered by that contract, without regard to age, sex, occupation and geographical location, but which may differ by health status. The term modified community rating shall apply to contracts and policies issued prior to the effective date of this act which are subject to the provisions of subsection e. of section 2 of this act.

"Net earned premium" means the premiums earned in this State on health benefits plans, less return premiums thereon and dividends paid or credited to policy or contract holders on the health benefits plan business. Net earned premium shall include the aggregate premiums earned on the carrier's insured group and individual business and health maintenance organization business, including premiums from any Medicare, Medicaid, NJ FamilyCare or NJ KidCare contracts with the State or federal government, but shall not include premiums earned from contracts funded pursuant to the "Federal Employee Health Benefits Act of 1959," 5 U.S.C. ss.8901-8914, any excess risk or stop loss insurance coverage issued by a carrier in connection with any self insured health benefits plan, or Medicare supplement policies or contracts.

"NJ FamilyCare" means the FamilyCare Health Coverage Program established pursuant to P.L.2000, c.71 (C.30:4J-1 et seq.).

"NJ KidCare" means the Children's Health Care Coverage Program established pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.).

"Non-group person life year" means coverage of a person for 12 months by an individual health benefits plan or conversion policy or contract subject to P.L.1992, c.161 (C.17B:27A-2 et seq.), Medicare cost or risk contract or Medicaid contract.

"Open enrollment" means the offering of an individual health benefits plan to any eligible person on a guaranteed issue basis, pursuant to procedures established by the board.

"Plan of operation" means the plan of operation of the program adopted by the board pursuant to this act.

"Plan sponsor" shall have the meaning given that term under Title I, section 3 of Pub.L.93-406, the "Employee Retirement Income Security Act of 1974" (29 U.S.C. s.1002(16)(B)).

"Preexisting condition" means a condition that, during a specified period of not more than six months immediately preceding the effective date of coverage, had manifested itself in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment, or for which medical advice, diagnosis, care or treatment was recommended or received as to that condition or as to a pregnancy existing on the effective date of coverage.

"Program" means the New Jersey Individual Health Coverage Program established pursuant to this act.

"Resident" means a person whose primary residence is in New Jersey and who is present in New Jersey for at least six months of the calendar year, or, in the case of a person who has moved to New Jersey less than six months before applying for individual health coverage, who intends to be present in New Jersey for at least six months of the calendar year.

"Two-year calculation period" means a two calendar year period, the first of which shall begin January 1, 1997 and end December 31, 1998.

C.17B:27A-12.1 Exemption from liability, certain, for HMO formed by UMDNJ.

2. Notwithstanding the provisions of any statute to the contrary, a health maintenance organization established by the University of Medicine and Dentistry of New Jersey pursuant to the provisions of P.L.1992, c.84 shall be exempt from liability for the assessment provided for in section 11 of P.L.1992, c.161 (C.17B:27A-12) for the 1999-2000 two-year calculation period.

3. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 350

AN ACT concerning accidental death benefits under the State Police Retirement System of New Jersey and amending and supplementing P.L.1965, c.89.

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

1. Section 14 of P.L.1965, c.89 (C.53:5A-14) is amended to read as follows;

C.53:5A-14 Accidental death benefits; payment of health insurance premiums.

14. a. Upon the death of a member in active service as a result of an accident met in the actual performance of duty at some definite time and place, and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the Division of State Police within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

b. (1) Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to the surviving spouse a pension of 70% of final compensation or of adjusted final compensation, as appropriate, for the use of that spouse and children of the deceased, to continue for as long as the person qualifies as a "surviving spouse" for the purposes of this act. If there is no surviving spouse or in case the spouse dies or remarries, 20% of final compensation or of adjusted final compensation, as the case may be, will be payable to one surviving child, 35% of final compensation or of adjusted final compensation, as the case may be, to two surviving children in equal shares and if there be three or more children, 50% of final compensation or of adjusted final compensation, as the case may be, will be payable to such children in equal shares.

If there is no surviving spouse or child, 25% of final compensation will be payable to one surviving parent or 40% of final compensation will be payable to two surviving parents in equal shares.

As used in this paragraph, "adjusted final compensation" means the amount of final compensation or final compensation as adjusted, as the case may be, increased by the same percentage increase which is applied in any adjustments of the compensation schedule of active members after the member's death and before the date on which the deceased member of the retirement system would have accrued 25 years of service under an assumption of continuous service, at which time the amount resulting from such increases shall become fixed and shall be the basis for adjustments pursuant to the Pension Adjustment Act, P.L.1958, c.143 (C.43:3B-1 et seq.). Any adjustments to final compensation or adjusted final compensation shall take effect at the same time as any adjustments in the compensation schedule of active members. The provisions of the Pension Adjustment

Act shall not apply to any pension based upon adjusted final compensation other than the fixed pension in effect at the conclusion of the 25-year period.

(2) In the event of accidental death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

c. If there is no surviving spouse, child or parent, there shall be paid to any other beneficiary of the deceased member, his aggregate contributions at the time of death.

d. In no case shall the death benefits provided in subsection b. be less than that provided under subsection c.

e. In addition to the foregoing benefits payable under subsection a. or b., there shall also be paid in one sum to the member's beneficiary, an amount equal to 3 1/2 times final compensation.

f. (Deleted by amendment.)

g. (Deleted by amendment.)

h. In addition to the foregoing benefits, the State shall pay to the member's employer-sponsored health insurance program all health insurance premiums for the coverage of the member's surviving spouse and surviving children.

C.53:5A-14.2 Applicability of adjustment in survivors' benefits.

2. The adjustment in survivors' benefits pursuant to this act, P.L.2001, c.350, shall apply to benefit entitlements granted prior to and in effect on the effective date of this act but only for benefit payments after the effective date of this act. No surviving spouse or surviving child of a deceased member of the retirement system shall be granted a retroactive payment based upon the difference between the benefit the person would have received if the adjustment pursuant to this act had been applicable at the date of entitlement and the benefit that the surviving spouse or surviving child has received from the date of entitlement to the effective date of this act.

3. This act shall take effect immediately but the adjustment provided for in this act shall not begin until the first benefit payment following the 90th day after enactment.

Approved January 6, 2002.

CHAPTER 351

AN ACT concerning military leave for public officers and employees, amending R.S.38:23-1, N.J.S.38A:1-1 and N.J.S.38A:4-4 and repealing P.L.1953, c.350 (C.38:23-1 et seq.).

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

1. R.S.38:23-1 is amended to read as follows:

Leave of absence for public officers, employees.

38:23-1. a. A permanent or full-time temporary officer or employee of the State or of a board, commission, authority or other instrumentality of the State, or of a county, school district or municipality, who is a member of the organized reserve of the Army of the United States, United States Naval Reserve, United States Air Force Reserve or United States Marine Corps Reserve, or other organization affiliated therewith, including the National Guard of other states, shall be entitled, in addition to pay received, if any, as a member of a reserve component of the Armed Forces of the United States, to leave of absence from his or her respective duty without loss of pay or time on all work days on which he or she shall be engaged in any period of Federal active duty, provided, however, that such leaves of absence shall not exceed 30 work days in any calendar year. Such leave of absence shall be in addition to the regular vacation or other accrued leave allowed such officer or employee. Any leave of absence for such duty in excess of 30 work days shall be without pay but without loss of time.

b. Notwithstanding subsection a. of this section, a full-time temporary officer or employee who has served under such temporary appointment for less than one year shall receive for the service hereinabove described leave without pay but without loss of time.

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

Definitions.

38A:1-1. The following definitions apply to this Title:

(a) "Militia" means all the military forces of this State, whether organized, or active or inactive.

(b) "National Guard" means the Army National Guard and the Air National Guard.

(c) "Army National Guard" means that part of the organized militia that is a land force, is trained and has its officers appointed under the 16th clause of section 8, Article I of the Constitution of the United States, is organized, armed and equipped wholly or partly at Federal expense, and is Federally recognized.

(d) "Army National Guard of the United States" is the reserve component of the Army of the United States all of whose members are members of the Army National Guard.

(e) "Air National Guard" means that part of the organized militia that is an air force, is trained and has its officers appointed under the 16th clause of section 8, Article I, of the Constitution of the United States, is organized, armed and equipped wholly or partly at Federal expense, and is Federally recognized.

(f) "Air National Guard of the United States" means the reserve component of the Air Force of the United States all of whose members are members of the Air National Guard.

(g) "Armed forces" means the land, air and sea forces established by State or Federal laws, as applicable.

(h) "Military" means any part of or all of the armed forces.

(i) "Active duty" means duty in the active military service.

(j) "Active duty for training" means duty in the active military service for training purposes.

(k) "Inactive duty training" means duty performed by a member of the organized militia other than active duty or active duty for training.

(l) "Officer" means commissioned officer or warrant officer.

(m) "Grade" means a step or degree, in a graduated field of office or military rank, that is established and designated as a grade by law or regulation.

(n) "Rank" means the order of precedence among members of the armed forces.

(o) "Permanent duty status" means full-time employment of a member of the organized militia ordered to active duty by the Governor to serve in the Department of Military and Veterans' Affairs.

(p) "Shall" is used in an imperative sense.

(q) "Will" is used in a permissive sense.

(r) "Regulations" means the rules and regulations on the governing and training of the militia.

(s) "Federal service" means duty in the active service of the United States.

(t) "Armory" means any building or training installation utilized by the organized militia.

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

Leave of absence without loss of pay, exceptions.

38A:4-4. a. A permanent or full-time temporary officer or employee of the State or of a board, commission, authority or other instrumentality of the State or of a county, school district or municipality who is a member of the organized militia shall be entitled, in addition to pay received, if any, as a member of the organized militia, to leave of absence from his or her

respective duties without loss of pay or time on all days during which he or she shall be engaged in any period of State or Federal active duty; provided, however, that the leaves of absence for Federal active duty or active duty for training shall not exceed 90 work days in the aggregate in any calendar year. Any leave of absence for such duty in excess of 90 work days shall be without pay but without loss of time.

b. Leave of absence for such military duty shall be in addition to the regular vacation or other accrued leave allowed such officers and employees by the State, county or municipal law, ordinance, resolution, or regulation.

c. Notwithstanding subsection a. of this section, a full-time temporary officer or employee who has served under such temporary appointment for less than one year shall receive for the service hereinabove described leave without pay but without loss of time.

C.52:13H-2.1 Reimbursement by State for cost incurred for certain military leave.

4. In accordance with the provisions of Article VIII, Section II, paragraph 5 of the New Jersey Constitution, upon application for reimbursement by a county or municipal governing body or a board of education to the State Treasurer for reimbursement and approval of the application by the Director of the Division of Budget and Accounting, reimbursement shall be made by the State for any costs incurred as a result of the provisions of P.L.2001, c.351.

Repealer.

5. P.L.1953, c.350 (C.38:23-1.1 et seq.) is repealed.

6. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 352

AN ACT concerning self-funded multiple employer welfare arrangements.

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

C.17B:27C-1 Short title.

1. This act shall be known and may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act."

C.17B:27C-2 Purposes of act.

2. The purposes of this act are to:

- a. provide for the registration of self-funded or partially self-funded multiple employer welfare arrangements;
- b. regulate self-funded or partially self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
- c. provide reporting requirements for self-funded or partially self-funded multiple employer welfare arrangements; and
- d. provide for sanctions against self-funded or partially self-funded multiple employer welfare arrangements that do not comply with the provisions of this act.

C.17B:27C-3 Definitions relative to self-funded multiple employer welfare arrangements.

3. For purposes of this act:

"Association" means a group of 100 or more persons organized and maintained in good faith for purposes other than that of obtaining insurance, in active existence for more than one year, having a constitution and bylaws that provide that: the association holds regular meetings not less than annually to further the purposes of the members; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

"Commissioner" means the Commissioner of Banking and Insurance.

"Employee welfare benefit plan" has the meaning set forth in subsection (1) of 29 U.S.C. s.1002.

"Multiple employer welfare arrangement" has the meaning set forth in subsection (40) of 29 U.S.C. s.1002.

"Self-funded multiple employer welfare arrangement" means a self-funded or partially self-funded multiple employer welfare arrangement that provides for health benefits plans that has two or more employers who each have two or more employees and that has one or more of the employer members either domiciled in this State or its principal headquarters or principal administrative office located in this State.

"Small employer" means the same as defined in section 1 of P.L. 1992, c.162 (C.17B:27A-17).

C.17B:27C-4 Annual registration, fee.

4. A self-funded multiple employer welfare arrangement shall register annually with the commissioner and pay a registration fee established by the commissioner which shall not exceed \$1,000.

C.17B:27C-5 Deposit, maintenance of cash, securities.

5. a. A self-funded multiple employer welfare arrangement shall deposit and continuously maintain with a financial institution licensed in this State,

cash or securities as defined in N.J.S.17B:18-37, having an admitted asset value of not less than \$200,000. The deposit shall be held for the benefit and protection of all covered members of the self-funded multiple employer welfare arrangement. The self-funded multiple employer welfare arrangement shall further maintain a cash reserve for loss in an amount established by a qualified actuary as being adequate to provide for all incurred losses including unpaid claims.

b. A self-funded multiple employer welfare arrangement shall maintain aggregate stop-loss coverage, with a retention level of 125 percent of expected claims per year, including provisions to cover incurred, unpaid claims liability in the event of the termination or liquidation of the self-funded multiple employer welfare arrangement, and specific stop-loss coverage, with a retention level determined annually by a qualified actuary based on sound actuarial principles. Any stop-loss contract maintained pursuant to this subsection shall contain a provision that the stop-loss insurer shall give the self-funded multiple employer welfare arrangement and the commissioner a minimum of 180 days' notice of cancellation or nonrenewal. If the self-funded multiple employer welfare arrangement fails to secure replacement coverage within 90 days after receipt of the notice of cancellation or nonrenewal, the trustees of the self-funded multiple employer welfare arrangement shall provide for the orderly liquidation of the self-funded multiple employer welfare arrangement.

C.17B:27C-6 Required filings.

6. Each self-funded multiple employer welfare arrangement shall file all of the following with the commissioner:

a. No later than May 15th of each calendar year or four months and 15 days after the end of each fiscal year of the self-funded multiple employer welfare arrangement, financial statements audited by a certified public accountant and on forms prescribed by the commissioner, an actuarial opinion rendered by a qualified actuary, a report of its Risk-Based Capital (RBC) as of the end of the immediately preceding calendar year, in a form and containing such information as is required by the instructions adopted by the National Association of Insurance Commissioners for health insurers, as amended from time to time and proof of the deposit required in accordance with section 5 of this act. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may prescribe by regulation. For purposes of this section and section 5 of this act, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations of the commissioner.

b. Within 60 days after the end of each fiscal quarter, unaudited financial statements on forms prescribed by the commissioner, affirmed by an appropriate officer or agent of the self-funded multiple employer welfare arrangement.

c. Within 60 days after the end of each fiscal quarter, a report on forms prescribed by the commissioner certifying that the self-funded multiple employer welfare arrangement maintains cash or liquid assets in a claim reserve account sufficient to meet the requirements of section 5 of this act.

C.17B:27C-7 Liability of members.

7. a. The liability of each member for the obligations of the self-funded multiple employer welfare arrangement shall be individual, several and proportionate, but not joint, except as provided in this section.

b. Each member shall have a contingent assessment liability pursuant to subsection c. of this section. Each benefit plan issued by a self-funded multiple employer welfare arrangement shall contain a statement of the contingent liability. Both the application for benefits and the benefit plan shall contain in contrasting color, not less than 10-point type, the following statement: "This is a fully assessable benefit plan. In the event that the self-funded multiple employer welfare arrangement is unable to pay its obligations, members shall be required to contribute on a pro rata earned premium basis the funds necessary to meet any unfilled obligations."

c. All self-funded multiple employer welfare arrangements shall provide that members are assessed in accordance with the provisions of this section. Each self-funded multiple employer welfare arrangement may assess all members if its prior fiscal year statement of operations reflected a loss. Each self-funded multiple employer welfare arrangement shall assess all members if the arrangement's fund balance or reserve at the end of any accounting period is less than the amount required by law. The minimum assessment shall be the amount necessary to comply with the requirements of sections 5 and 9 of this act. Each member's assessment shall be computed by applying the earned premium for each employer's benefit plan during the prior fiscal year as a percent of the amount of the total of all employers' earned premium for the same year. Each member's assessment shall be that member's percent times the total assessment levied. In the event a member fails to pay an assessment, the other members shall be liable on a proportionate basis for an additional assessment. The self-funded multiple employer welfare arrangement, acting on behalf of all members who paid the additional assessment, shall take appropriate legal action to recover the assessment from any member who fails to pay an assessment.

d. In the event of a rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement, the court, pursuant to section 11 of this act, may assess the members in the amounts needed to pay all incurred but unpaid claims and all projected claims, together with the costs and expenses of collecting the assessments, a reasonable loading factor for uncollected assessments and the costs and expenses of the rehabilitation, liquidation, conservation or dissolution.

e. The following notice shall be provided to employers and employees who obtain coverage from a self-funded multiple employer welfare arrangement:

NOTICE

THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT.

FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR AT _____ (this blank should include the "800" consumer service telephone number).

C.17B:27C-8 Inapplicability of insurance laws.

8. a. Except as provided by this act, the insurance laws of this State do not apply to the operation of self-funded multiple employer welfare arrangements. A self-funded multiple employer welfare arrangement is not an insurance company or insurer under the laws of this State.

b. Any self-funded multiple employer welfare arrangement shall offer all products that it is actively marketing to any employer, and accept any employer and any employee of that employer who applies for any of those products; provided, however that a self-funded multiple employer welfare arrangement may limit participation to members of the association.

c. Assessments payable by small employer members, except for dental plans, shall be established in accordance with the rating requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations promulgated thereunder; provided, however, that for the first year after the effective date of this act, a self-funded multiple employer welfare arrangement providing benefits in this State prior to the effective date of this act shall: (1) not charge a small employer member an assessment greater than 300 percent of the assessment charged to the lowest rated small employer member of the self-funded multiple employer welfare arrangement; (2) for the second year after the effective date of this act, not charge a small employer member an assessment greater than 250 percent of the assessment charged to the lowest rated small employer member of the self-funded multiple employer welfare arrangement; and (3) for each year thereafter, comply with the rating requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations promulgated thereunder.

d. The health benefits to be provided by the self-funded multiple employer welfare arrangement shall at all times be equal to or greater than benefits required to be provided in the lowest benefit level standard plan promulgated by the New Jersey Small Employer Health Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.).

C.17B:27C-9 Examination of loss reserves.

9. a. The commissioner may, upon reasonable notice, conduct an examination of the loss reserves of a self-funded multiple employer welfare arrangement as often as the commissioner in his discretion may deem necessary. The expenses of the examination shall be paid by the self-funded multiple employer welfare arrangement so examined. The commissioner shall also annually review the RBC report of the self-funded multiple employer welfare arrangement.

b. If the commissioner finds that the reserves are inadequate, he shall notify the self-funded multiple employer welfare arrangement of the inadequacy. Capital and surplus shall be automatically considered inadequate if they do not meet or exceed the following: (1) for the calendar year ending December 31, 2002, 80 percent of the regulatory action level RBC determined in accordance with the RBC instructions; (2) for the calendar year ending December 31, 2003, 90 percent of the regulatory action level RBC determined in accordance with the RBC instructions; (3) for the calendar year ending December 31, 2004, 95 percent of the regulatory action level RBC determined in accordance with the RBC instructions; and (4) for the calendar years ending on or after December 31, 2005, the regulatory action level RBC determined in accordance with the RBC instructions. Within 30 days the self-funded multiple employer welfare

arrangement shall file and implement a plan to correct the inadequacy. The inadequacy shall be corrected within 90 days of the implementation of the plan to correct the inadequacy.

C.17B:27C-10 Revocation, suspension of certificate of registration; violations, penalties.

10. a. The commissioner may revoke or suspend the certificate of registration of any self-funded multiple employer welfare arrangement that fails to correct any inadequacy pursuant to section 9 of this act or violates any provision of this act.

b. Any person who violates any provision of this act or the rules and regulations issued pursuant thereto shall be liable to a penalty of not more than \$1,000 for a first offense and not more than \$5,000 for each subsequent offense.

C.17B:27C-11 Rehabilitation, liquidation, conservation, dissolution.

11. Any rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement shall be conducted under the supervision of the State Superior Court in the county in which the self-funded multiple employer welfare arrangement has its principal office.

C.17B:27C-12 Rules, regulations.

12. The commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations necessary to effectuate the purposes of this act.

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

Approved January 6, 2002.

CHAPTER 353

AN ACT concerning the retirement benefits under the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System of New Jersey, amending and supplementing N.J.S.18A:66-1 et seq. and P.L.1954, c.84 (C.43:15A-1 et seq.) and amending P.L.1955, c.257 (C.43:15A-97 et seq.).

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

1. N.J.S.18A:66-41 is amended to read as follows:

Ordinary disability allowances.

18A:66-41. A member upon retirement for ordinary disability shall receive a retirement allowance which shall consist of:

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his retirement together with regular interest after January 1, 1956; and

(b) a pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 1.64% of final compensation multiplied by his number of years of creditable service; and provided further, that in no event shall the allowance be less than 43.6% of final compensation.

Upon the receipt of proper proofs of the death of a member who has retired on an ordinary disability retirement allowance, there shall be paid to such member's beneficiary, an amount equal to 1 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service or in the year of the member's highest contractual salary, whichever is higher; provided, however, that if such death shall occur after the member shall have attained age 60, the amount payable shall equal 3/16 of such compensation. The death benefits provided in this section shall apply to any member who has retired or shall retire on or after January 1, 1956.

C.18A:66-41.1 Increase in retirement allowance for retiree, beneficiary under N.J.S.18A:66-41 or N.J.S.18A:66-47.

2. The retirement allowance of each retiree under N.J.S.18A:66-41, or the retiree's beneficiary pursuant to N.J.S.18A:66-47, on the effective date of P.L.2001, c.353 shall be increased by a percentage equivalent to the percentage increase in the fraction of final compensation for each year of credited service for the total retirement allowance under these sections made by this act, P.L.2001, c.353 (C.18A:66-41.1 et al.). The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not be applicable to the increases in retirement allowances provided by this section.

3. N.J.S.18A:66-42 is amended to read as follows:

Accidental disability allowances.

18A:66-42. A member under 65 years of age upon retirement for accidental disability shall receive a retirement allowance which shall consist of:

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his retirement together with regular interest after January 1, 1956; and

(b) a pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 72.7% of his actual annual compensation for which contributions were being made at the time of the occurrence of the accident.

Upon the receipt of proper proofs of the death of a member who has retired on an accidental disability retirement allowance, there shall be paid to such member's beneficiary, an amount equal to 1 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service or in the year of the member's highest contractual salary, whichever is higher; provided, however, that if such death shall occur after the member shall have attained age 60, the amount payable shall equal 3/16 of such compensation. The death benefits provided in this section shall apply to any member who has retired or shall retire on or after January 1, 1956.

C.18A:66-42.1 Increase in retirement allowance under N.J.S.18A:66-42 or N.J.S.18A:66-47.

4. The retirement allowance of each retiree under N.J.S.18A:66-42, or the retiree's beneficiary pursuant to N.J.S.18A:66-47, on the effective date of P.L.2001, c.353 shall be increased from 2/3 to 72.7% of the actual annual compensation for which contributions were being made at the time of the occurrence of the accident. The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not be applicable to the increases in retirement allowances provided by this section.

C.18A:66-42.2 Payment of normal contribution for increased benefits under N.J.S.18A:66-41 and N.J.S.18A:66-42 for active members.

5. The normal contribution for the increased benefits for active members under N.J.S.18A:66-41 and N.J.S.18A:66-42 as amended by sections 1 and 3 of P.L.2001, c.353 shall be paid from the benefit enhancement fund established pursuant to N.J.S.18A:66-16. If there are excess valuation assets after reductions in normal contributions and member contributions, the amount of excess valuation assets credited to the benefit enhancement fund shall include the present value of the expected additional normal contributions attributable to the provisions of N.J.S.18A:66-41 and N.J.S.18A:66-42 as amended by sections 1 and 3 of P.L.2001, c.353 payable on behalf of the active members over the expected working lives of the active members in accordance with the tables of actuarial assumptions for the valuation period. No additional excess valuation assets shall be credited to the benefit enhancement fund after the maximum amount is attained. Interest shall be credited to the benefit enhancement fund as provided under N.J.S.18A:66-25. If assets in the benefit enhancement fund are insufficient to pay the normal contribution for the increased benefits for a valuation period, the State shall pay the amount of normal contribution for

the increased benefits not covered by assets from the benefit enhancement fund.

6. N.J.S.18A:66-71 is amended to read as follows:

Retirement allowance for veterans.

18A:66-71. a. Any public employee veteran member in office, position or employment of this State or of a county, municipality, or school district, board of education or other employer who (1) has or shall have attained the age of 60 years and has or shall have been for 20 years continuously or in the aggregate in office, position or employment of this State or of a county, municipality or school district, board of education or other employer, or (2) has or shall have attained the age of 55 years and has or shall have been for 25 years continuously or in the aggregate in that office, position or employment, shall have the privilege of retiring for service and of receiving, instead of the retirement allowance provided under N.J.S.18A:66-44, a retirement allowance of 54.5% of the compensation for which contributions are made during the 12-month period of membership providing the largest possible benefit to the member or the member's beneficiary.

b. (Deleted by amendment, P.L.1984, c.69.)

c. Any public employee veteran member who has been for 20 years in the aggregate in office, position or employment of this State or of a county, municipality or school district, board of education or other employer as of January 1, 1955, shall have the privilege of retiring for ordinary disability and of receiving, instead of the retirement allowance provided under N.J.S.18A:66-41, a retirement allowance of one-half of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made. Such retirement shall be subject to the provisions governing ordinary disability retirement in N.J.S.18A:66-39 and N.J.S.18A:66-40.

d. Any public employee veteran member who shall be in office, position or employment of this State or of a county, municipality, school district, board of education or other employer and who shall have attained 55 years of age and who has at least 35 years of aggregate service credit in such office, position or employment, shall have the privilege of retiring for service and receiving a retirement allowance of 1/55 of the compensation he received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made for each year of creditable service.

e. The death benefit provided in N.J.S.18A:66-44 shall apply in the case of any member retiring under the provisions of subsections a. and d. of this section and in the case of any member who has previously retired under

the provisions of subsection b. of this section before said subsection was amended by P.L.1984, c.69. The death benefit provided in N.J.S.18A:66-41 shall apply in the case of any member retired under the provisions of subsection c. of this section.

f. A member who purchases service credit pursuant to any provision of the "Teachers' Pension and Annuity Fund Law" (N.J.S.18A:66-1 et seq.) is entitled to apply the credit for the purpose of satisfying any of the service requirements of that act.

C.18A:66-71.2 Increase in retirement allowance under subsection a. of N.J.S.18A:66-71 and N.J.S.18A:66-47.

7. The retirement allowance of each retiree under subsection a. of N.J.S.18A:66-71, or the retiree's beneficiary pursuant to N.J.S.18A:66-47, on the effective date of P.L.2001, c.353, shall be increased from 50% to 54.5% of the compensation for which contributions were made during the 12-month period of membership providing the largest possible benefit to the member or the member's beneficiary. The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not be applicable to the increases in retirement allowances provided by this section.

C.18A:66-71.3 Payment of normal contribution for increased benefits under subsection a. of N.J.S.18A:66-71.

8. The normal contribution for the increased benefits for active members under subsection a. of N.J.S.18A:66-71 as amended by section 6 of P.L.2001, c.353 shall be paid from the benefit enhancement fund established pursuant to N.J.S.18A:66-16. If there are excess valuation assets after reductions in normal contributions and member contributions, the amount of excess valuation assets credited to the benefit enhancement fund shall include the present value of the expected additional normal contributions attributable to the provisions of subsection a. of N.J.S.18A:66-71 as amended by section 6 of P.L.2001, c.353 payable on behalf of the active members over the expected working lives of the active members in accordance with the tables of actuarial assumptions for the valuation period. No additional excess valuation assets shall be credited to the benefit enhancement fund after the maximum amount is attained. Interest shall be credited to the benefit enhancement fund as provided under N.J.S.18A:66-25. If assets in the benefit enhancement fund are insufficient to pay the normal contribution for the increased benefits for a valuation period, the State shall pay the amount of normal contribution for the increased benefits not covered by assets from the benefit enhancement fund.

9. Section 45 of P.L.1954, c.84 (C.43:15A-45) is amended to read as follows:

C.43:15A-45 Allowance for ordinary disability retirement.

45. A member upon retirement for ordinary disability shall receive a retirement allowance, which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated deductions together with regular interest and

b. A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 1.64% of final compensation multiplied by his number of years of creditable service; provided further, that in no event shall the allowance be less than 43.6% of final compensation.

c. Upon the receipt of proper proofs of the death of a member who has retired on an ordinary disability retirement allowance, there shall be paid to such member's beneficiary, an amount equal to 1 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service; provided, however, that if such death shall occur after the member shall have attained age 60, the amount payable shall equal 3/16 of such compensation.

C.43:15A-45.1 Increase in retirement allowance under C.43:15A-45 and C.43:15A-50.

10. The retirement allowance of each retiree under section 45 of P.L.1954, c.84 (C.43:15A-45), or the retiree's beneficiary pursuant to section 50 of P.L.1954, c.84 (C.43:15A-50), on the effective date of P.L.2001, c.353 shall be increased by a percentage equivalent to the percentage increase in the fraction of final compensation for each year of credited service for the total retirement allowance under these sections made by this act, P.L.2001, c.353 (C.18A:66-41.1 et al.). The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not be applicable to the increases in retirement allowances provided by this section.

11. Section 46 of P.L.1954, c.84 (C.43:15A-46) is amended to read as follows:

C.43:15A-46 Allowance for retirement for accidental disability.

46. A member under 65 years of age upon retirement for accidental disability shall receive a retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated deductions together with regular interest; and

b. A pension, in the amount which, when added to the member's annuity, will provide a total retirement allowance of 72.7% of his actual annual compensation for which contributions were being made at the time of the occurrence of the accident.

c. Upon receipt of proper proofs of the death of a member who has retired on an accidental disability retirement allowance, there shall be paid to such member's beneficiary, an amount equal to 1 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service; provided, however, that if such death shall occur after the member shall have attained age 60, the amount payable shall equal 3/16 of such compensation.

C.43:15A-46.1 Increase in retirement allowance under C.43:15A-46 and C.43:15A-50.

12. The retirement allowance of each retiree under section 46 of P.L.1954, c.84 (C.43:15A-46), or the retiree's beneficiary pursuant to section 50 of P.L.1954, c.84 (C.43:15A-50), on the effective date of P.L.2001, c.353 shall be increased from 2/3 to 72.7% of the actual annual compensation for which contributions were being made at the time of the occurrence of the accident. The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not be applicable to the increases in retirement allowances provided by this section.

C.43:15A-46.2 Payment of normal contribution for increased benefits for active members under C.43:15A-45 and C.43:15A-46.

13. The normal contribution for the increased benefits for active members under sections 45 and 46 of P.L.1954, c.84 (C.43:15A-45 and 43:15A-46) as amended by sections 9 and 11 of P.L.2001, c.353 shall be paid from the benefit enhancement fund established pursuant to section 22 of P.L.1954, c.84 (C.43:15A-22). If there are excess valuation assets after reductions in normal contributions and member contributions, the amount of excess valuation assets credited to the benefit enhancement fund shall include the present value of the expected additional normal contributions attributable to the provisions of sections 45 and 46 of P.L.1954, c.84 (C.43:15A-45 and 43:15A-46) as amended by sections 9 and 11 of P.L.2001, c.353 payable on behalf of the active members over the expected working lives of the active members in accordance with the tables of actuarial assumptions for the valuation period. No additional excess valuation assets shall be credited to the benefit enhancement fund after the maximum amount is attained. Interest shall be credited to the benefit enhancement fund as provided under section 33 of P.L.1954, c.84 (C.43:15A-33). If assets in the benefit enhancement fund are insufficient to pay the normal contribution for the increased benefits for a valuation period, the State shall pay the amount of normal contribution for the increased benefits not covered by assets from the benefit enhancement fund.

14. Section 61 of P.L.1954, c.84 (C.43:15A-61) is amended to read as follows:

C.43:15A-61 Public employee veterans' pensions.

61. a. (Deleted by amendment, P.L.1995, c.332.)

b. Any public employee veteran member in office, position or employment of this State or of a county, municipality, public agency, school district or board of education and who (1) shall have attained 60 years of age and who has 20 years of aggregate service credit in such office, position or employment, or (2) shall have attained 55 years of age and who has 25 years of aggregate service credit in such office, position or employment, shall have the privilege of retiring for service and receiving, instead of the retirement allowance provided under section 48 of this act, a retirement allowance of 54.5% of the compensation for which contributions are made during the 12-month period of membership providing the largest possible benefit to the member or the member's beneficiary.

c. Any public employee veteran member who has been for 20 years in the aggregate in office, position or employment of this State or of a county, municipality, public agency, school district or board of education as of January 2, 1955, shall have the privilege of retiring for ordinary disability and of receiving, instead of the retirement allowance provided under section 45 of this act, a retirement allowance of one-half of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made. Such retirement shall be subject to the provisions governing ordinary disability retirement in sections 42 and 44 of this act.

d. Any public employee veteran member who shall be in office, position or employment of this State or of a county, municipality, public agency, school district or board of education and who shall have attained 55 years of age and who has at least 35 years of aggregate service credit in such office, position or employment, shall have the privilege of retiring for service and receiving a retirement allowance of 1/55 of the compensation he received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made for each year of creditable service.

e. The death benefit provided in section 48 shall apply in the case of any member retiring under the provisions of subsections a., b. and d. of this section. The death benefit provided in section 45 shall apply in the case of any member retired under the provisions of subsection c. of this section.

f. The State shall be liable for any increased cost to local government employers participating in the retirement system as a result of the amendment of this section by P.L.2001, c.353, except as provided in section 16 of P.L.2001, c.353.

C.43:15A-61.2 Increase of retirement allowance under subsection b. of C.43:15A-61 and C.43:15A-50.

15. The retirement allowance of each retiree under subsection b. of section 61 of P.L.1954, c.84 (C.43:15A-61), or the retiree's beneficiary pursuant to section 50 of P.L.1954, c.84 (C.43:15A-50), on the effective date of P.L.2001, c.353 shall be increased from 50% to 54.5% of the compensation for which contributions were made during the 12-month period of membership providing the largest possible benefit to the member or the member's beneficiary. The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not be applicable to the increases in retirement allowances provided by this section.

C.43:15A-61.3 Payment of normal contribution for increased benefits for active members under C.43:15A-61.

16. The normal contribution for the increased benefits resulting from the increase in the percentage of compensation for active members under section 61 of P.L.1954, c.84 (C.43:15A-61) as amended by section 14 of P.L.2001, c.353 shall be paid from the benefit enhancement fund established pursuant to section 22 of P.L.1954, c.84 (C.43:15A-22). If there are excess valuation assets after reductions in normal contributions and member contributions, the amount of excess valuation assets credited to the benefit enhancement fund shall include the present value of the expected additional normal contributions attributable to the provisions of section 61 of P.L.1954, c.84 (C.43:15A-61) as amended by section 14 of P.L.2001, c.353 payable on behalf of the active members in accordance with the tables of actuarial assumptions for the valuation period. No additional excess valuation assets shall be credited to the benefit enhancement fund after the maximum amount is attained. Interest shall be credited to the benefit enhancement fund as provided under section 33 of P.L.1954, c.84 (C.43:15A-33). If assets in the benefit enhancement fund are insufficient to pay the normal contribution for the increased benefits for a valuation period, the State shall pay the amount of normal contribution for the increased benefits not covered by assets from the benefit enhancement fund.

17. Section 4 of P.L.1955, c.257 (C.43:15A-100) is amended to read as follows:

C.43:15A-100 Amount of retirement allowance for law enforcement officer.

4. Upon service retirement as a law enforcement officer a member shall receive a service retirement allowance consisting of:

a. An annuity which shall be the actuarial equivalent of his accumulated deductions together with regular interest and

b. A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance equal to 2% of his final compensation multiplied by his number of years of service credit as a law enforcement officer for which he has made contributions up to 25, plus the amount determined as provided in section 48 of P.L.1954, c.84 (C.43:15A-48) for years of service credit other than service as a law enforcement officer, for which he has made contributions, plus 1% of his final compensation multiplied by his number of years of service credit as a law enforcement officer for which he has made contributions over 25 or for which he has made no contributions to the retirement system for the period while he was a law enforcement officer or, in the case of a veteran, while he was in office, position or employment of this State, or of any county, municipality, public agency or school district; provided, however, that in the case of any member electing to receive benefits under section 38(b) of chapter 84 of the laws of 1954, such benefits shall be payable at age 60.

The death benefit provided in section 48(c) of chapter 84 of the laws of 1954 shall apply in the case of any member retiring under the provisions of this section.

18. This act shall take effect immediately and shall be retroactive to October 1, 2001

Approved January 6, 2002.

CHAPTER 354

AN ACT concerning the exemption from property taxation of certain firefighters' organizations and amending R.S.54:4-3.10.

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

1. R.S.54:4-3.10 is amended to read as follows:

Property of firefighters' association, exemption from taxation.

54:4-3.10. The real and personal property of any exempt firefighter's association, firefighter's relief association and volunteer fire company incorporated under the laws of this State and which is actually used for the purpose of the corporation shall be exempt from taxation under this chapter.

No property shall lose its tax exemption or be denied an exemption under this section because of the use of the property for an income-producing activity that is not the organization's primary purpose provided all net proceeds from that activity are utilized in furtherance of the

primary purpose of the organization or for other charitable purposes. Commencing with the effective date of P.L.2001, c.85, exempt firefighter's associations, firefighter's relief associations and volunteer fire companies shall be required to record the dates the property has been utilized for income-producing activities and to maintain such records during the calendar year in which the income-producing activity takes place and for the two calendar years thereafter.

2. This act shall take effect immediately and shall be retroactive to January 1, 1998.

Approved January 6, 2002.

CHAPTER 355

AN ACT concerning an exemption from reenrollment for certain retirees of the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System of New Jersey and amending N.J.S.18A:66-53.2 and P.L.1966, c.217.

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

1. N.J.S.18A:66-53.2 is amended to read as follows:

Reemployment of retirant; reenrollment; subsequent retirement.

18A:66-53.2. a. Except as provided in subsection b. of this section, if a former member of the retirement system who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of reenrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former membership shall be paid if his death shall occur during the period of such reenrollment.

Upon subsequent retirement of such member, his former retirement allowance shall be reinstated together with any optional selection, based on his former membership. In addition, he shall receive an additional retirement allowance based on his subsequent service as a member

computed in accordance with applicable provisions of this article; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his final compensation than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement, but shall not be less than the death benefit that was applicable to his former retirement.

b. The cancellation, reenrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who is a certificated superintendent or a certificated administrator and who, after having been granted a retirement allowance, becomes employed by the State Department of Education in a position of critical need as determined by the State Commissioner of Education, or becomes employed by a board of education as a certificated superintendent or a certificated administrator on a contractual basis for a term of not more than one year; except that the cancellation, reenrollment, and additional retirement allowance provisions shall apply if the former member becomes employed within 120 days of retirement with the employer from which the member retired. Nothing herein shall preclude a former member so reemployed with a board of education from renewing a contract for one additional year, provided that the total period of employment with any individual board of education does not exceed a two-year period.

2. Section 27 of P.L.1966, c.217 (C.43:15A-57.2) is amended to read as follows:

C.43:15A-57.2 Reemployment of retired former member.

27. a. Except as provided in subsections b. and c. of this section, if a former member of the State Employees' Retirement System or the retirement system, who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be re-enrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of re-enrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former membership shall be paid if his death shall occur during the period of such re-enrollment.

Upon subsequent retirement of such member, his former retirement allowance shall be reinstated together with any optional selection, based on his former membership. In addition, he shall receive an additional retirement allowance based on his subsequent service as a member computed in accordance with applicable provisions of chapter 84 of the laws of 1954; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his final compensation than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement, but shall not be less than the death benefit that was applicable to his former retirement.

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed again by: (1) an employer or employers in a position or positions for which the aggregate compensation does not exceed \$15,000 per year; or (2) if the compensation exceeds \$10,000 per year, by an employer that is a public institution of higher education as defined in N.J.S.18A:62-1 in a teaching staff position. The Director of the Division of Pensions and Benefits may from time to time adjust the amount in paragraph (1) of this subsection. This adjustment shall be $\frac{3}{5}$ of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the director.

c. The cancellation, reenrollment, and additional retirement allowance provisions of subsection a. and the compensation limitations of subsection b. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed by the State Department of Education in a position of critical need as determined by the State Commissioner of Education, or becomes employed by a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year; except that the cancellation, reenrollment, and additional retirement allowance provisions and the compensation limitations shall apply if the former member becomes employed within 120 days of retirement in a position with the employer from which the member retired. Nothing herein shall preclude a former member so reemployed by a board of education from renewing a contract for one additional year, provided that the total period of employment with any individual board of education does not exceed a two-year period

3. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 356

AN ACT concerning the funding of special education costs for public school students and amending P.L.1996, c.138.

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

1. Section 19 of P.L.1996, c.138 (C.18A:7F-19) is amended to read as follows:

C.18A:7F-19 Calculation of special education categorical aid.

19. a. Special education categorical aid for each school district and county vocational school district shall be calculated for the 1997-98 school year as follows:

Tier I is the number of pupils classified for other than speech correction services resident in the district which receive related services including, but not limited to, occupational therapy, physical therapy, speech and counseling. Aid shall equal 0.0223 of the T&E amount rounded to the nearest whole dollar for each of the four service categories provided per classified pupil.

Tier II is the number of pupils resident in the district meeting the classification definitions for perceptually impaired, neurologically impaired, educable mentally retarded and preschool handicapped; all classified pupils in shared time county vocational programs in a county vocational school which does not have a child study team receiving services pursuant to chapter 46 of Title 18A of the New Jersey Statutes; and nonclassified pupils in State training schools or secure care facilities. For the purpose of calculating State aid for 1997-98, each district, other than a county vocational school district, shall have its pupil count for perceptually impaired reduced by perceptually impaired classifications in excess of one standard deviation above the State average classification rate at December 1995 or 9.8 percent of the district's resident enrollment. The perceptually impaired limitation shall be phased down to the State average of the prebudget year over a five-year period by adjusting the standard deviation as follows: 75 percent in 1998-99, 50 percent in 1999-2000, 25 percent in 2000-2001 and the State average in year five. No reduction in aid shall be assessed against any district in which the perceptually impaired classifica-

tion rate is 6.5% or less of resident enrollment. Aid shall equal 0.4382 of the T&E amount rounded to the nearest whole dollar for each student meeting the Tier II criteria.

The commissioner shall develop a system to provide that each school district submits data to the department on the number of the district's pupils with a classification definition of perceptually impaired who are enrolled in a county vocational school. Such pupils shall be counted in the district of residence's resident enrollment for the purpose of calculating the limit on perceptually impaired classifications for Tier II State aid.

Tier III is the number of classified pupils resident in the district in categories other than speech correction services, perceptually impaired, neurologically impaired, educable mentally retarded, socially maladjusted, preschool handicapped, and who do not meet the criteria of Tier IV, intensive services; and nonclassified pupils in juvenile community programs. Aid shall equal 0.8847 of the T&E amount for each pupil meeting the Tier III criteria.

Tier IV is the number of classified pupils resident in the district receiving intensive services. For 1997-98, intensive services are defined as those provided in a county special services school district and services provided for pupils who meet the classification definitions for autistic, chronically ill, day training eligible, or visually handicapped, or are provided for pupils who meet the classification definition for multiply handicapped and are in a private school for the handicapped, educational services commission, or jointure commission placement in the 1996-97 school year. The commissioner shall collect data and conduct a study to determine intensive service criteria and the appropriate per pupil cost factor to be universally applied to all service settings, beginning in the 1998-99 school year. Aid shall equal 1.2277 of the T&E amount for each pupil meeting the Tier IV criteria.

Classified pupils in Tiers II through IV shall be eligible for Tier I aid. Classified pupils shall be eligible to receive aid for up to four services under Tier I.

For the 1998-99 school year, these cost factors shall remain in effect and special education aid growth shall be limited by the CPI growth rate applied to the T&E amount and changes in classified pupil counts. For subsequent years, the additional cost factors shall be established biennially in the Report on the Cost of Providing a Thorough and Efficient Education.

For the purposes of this section, classified pupil counts shall include pupils attending State developmental centers, DHS Regional Day Schools, State Division of Youth and Family Services' residential centers, State residential mental health centers, and institutions operated by or under contract with the Department of Human Services. Classified pupils of

elementary equivalent age shall include classified preschool handicapped and kindergarten pupils.

b. In those instances in which the cost of providing education for an individual classified pupil exceeds \$40,000:

(1) For costs in excess of \$40,000 incurred in the 2002-2003 through 2004-2005 school years, the district of residence shall, in addition to any special education State aid to which the district is entitled on behalf of the pupil pursuant to subsection a. of this section, receive additional special education State aid as follows: (a) with respect to the amount of any costs in excess of \$40,000 but less than or equal to \$60,000, the additional State aid for the classified pupil shall equal 60% of that amount; (b) with respect to the amount of any costs in excess of \$60,000 but less than or equal to \$80,000, the additional State aid for the classified pupil shall equal 70% of that amount; and (c) with respect to the amount of any costs in excess of \$80,000, the additional State aid for the classified pupil shall equal 80% of that amount; provided that in the case of an individual classified pupil for whom additional special education State aid was awarded to a district for the 2001-2002 school year, the amount of such aid awarded annually to the district for that pupil for the 2002-2003, 2003-2004 or 2004-2005 school year shall not be less than the amount for the 2001-2002 school year, except that if the district's actual special education costs incurred for the pupil in the 2002-2003, 2003-2004 or 2004-2005 school year are reduced below the amount of such costs for the pupil in the 2001-2002 school year, the amount of aid shall be decreased by the amount of that reduction; and

(2) For costs in excess of \$40,000 incurred in the 2005-2006 school year and thereafter, a district shall receive additional special education State aid equal to 100% of the amount of that excess.

A district, in order to receive funding pursuant to this subsection, shall file an application with the department that details the expenses incurred on behalf of the particular classified pupil for which the district is seeking reimbursement. Additional State aid awarded for extraordinary special education costs shall be recorded by the district as revenue in the current school year and paid to the district in the subsequent school year.

c. A school district may apply to the commissioner to receive emergency special education aid for any classified pupil who enrolls in the district prior to March of the budget year and who is in a placement with a cost in excess of \$40,000. The commissioner may debit from the student's former district of residence any special education aid which was paid to that district on behalf of the student.

d. The department shall review expenditures of federal and State special education aid by a district in every instance in which special

education monitoring identifies a failure on the part of the district to provide services consistent with a pupil's individualized education program.

2. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 357

AN ACT concerning hepatitis C, supplementing Title 26 of the Revised Statutes, and amending P.L.1998, c.116.

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

C.26:2T-5 Findings, declarations relative to Hepatitis C.

1. The Legislature finds and declares that:
 - a. Hepatitis C is a silent killer, being largely asymptomatic until irreversible liver damage may have occurred;
 - b. Hepatitis C has been characterized by the World Health Organization as a disease of primary concern to humanity;
 - c. Hepatitis C currently infects approximately 4.5 million persons in the United States; and each year, there are some 30,000 new infections nationwide;
 - d. The federal Centers for Disease Control and Prevention estimate that approximately 12,000 persons die annually from the consequences of hepatitis C, and this number continues to grow each year;
 - e. It is estimated that approximately 200,000 New Jersey citizens are infected with hepatitis C;
 - f. The disease is considered to be such a public health threat that the United States Department of Health and Human Services has initiated a comprehensive plan to address this significant health problem, beginning with the identification of, and notification to, hundreds of thousands of persons who were inadvertently exposed to hepatitis C through blood transfusions;
 - g. In the absence of a vaccine for hepatitis C, emphasis must be placed on other means of awareness and prevention of this disease, including, but not limited to, education of persons at high risk for hepatitis C as defined by the federal Centers for Disease Control and Prevention, and the Occupational Safety and Health Administration in the U.S. Department of Labor, including but not limited to, police officers, correctional officers,

firefighters, including volunteers, health care workers, emergency services personnel, employees of the State's developmental centers and the general public; and

h. New Jersey has established itself at the forefront of the fight against hepatitis C by becoming the first State in the nation to establish a comprehensive awareness program pursuant to P.L. 1998, c.116 (C.26:2T-1 et seq.), and through the enactment of this act will ensure an optimal approach to controlling this lethal disease.

C.26:2T-6 Definitions relative to Hepatitis C.

2. As used in this act:

"Commissioner" means the Commissioner of Health and Senior Services.

"HCV" means the hepatitis C virus.

"Program" means the hepatitis C education, prevention and screening program established pursuant to this act.

C.26:2T-7 Hepatitis C education, prevention and screening program.

3. In consultation with the hepatitis C advisory board established pursuant to section 4 of this act, the Commissioner of Health and Senior Services shall establish a hepatitis C education, prevention and screening program that includes, but is not limited to, measures directed to physicians and other health care workers, police officers, correctional officers, firefighters, emergency services personnel, employees of the State's developmental centers and the general public. The program shall be established in accordance with accepted public health practice and recommendations of the federal Centers for Disease Control and Prevention, the Surgeon General of the United States, the American Association for the Study of Liver Diseases, the National Institutes of Health and the American Liver Foundation and within the limits of resources available for the purposes thereof.

a. For the purposes of this program, the commissioner shall develop and implement the following:

(1) public education and outreach to raise awareness of hepatitis C among persons at high risk for hepatitis C as described in section 2 of P.L. 1998, c.116 (C.26:2T-2), which includes police officers, firefighters, persons employed by correctional facilities, emergency response personnel and other high-risk groups, including, but not limited to, health care professionals and persons employed in primary care settings or health care facilities, which shall include, at a minimum, information on risk factors, the value of early detection and the options available for treating hepatitis C;

(2) measures to promote public awareness about the availability of hepatitis C screening, prevention and treatment services among persons at

high risk for hepatitis C as determined by the commissioner based upon data provided by the federal Centers for Disease Control and Prevention, the Surgeon General of the United States, the American Association for the Study of Liver Diseases, the National Institutes of Health and the American Liver Foundation and any other nationally recognized liver societies;

(3) educational activities for health care professionals in regard to the epidemiology, natural history, detection and treatment of hepatitis C, which shall include information about coinfection with HCV and HIV and the implications of coinfection for HIV or AIDS treatment;

(4) educational and informational measures targeted at specific groups, including, but not limited to, activities designed to educate youth about the long-term consequences of infection with HCV;

(5) measures to prevent further transmission of HCV and to prevent onset of chronic liver disease caused by hepatitis C through outreach to detect and treat chronic HCV infection; and

(6) a collaborative effort with the Department of Corrections to develop screening services to identify inmates at risk for hepatitis C upon admission, and to provide education and counseling about treatment options to reduce the potential health risk to the community from these persons.

b. The commissioner shall evaluate existing hepatitis C support services in the community and assess the need for improving the quality and accessibility of these services.

c. The commissioner shall seek to establish public-private partnerships to promote outreach and increase awareness for the purposes of this act among employers, organized labor, health care providers, health insurers, and community-based organizations and coalitions.

d. The commissioner shall take such actions as are reasonably necessary to ensure that the program established pursuant to this act provides clear, complete and accurate hepatitis C education, information and referral services in a multiculturally competent manner that is designed to provide appropriate linkages to health care services for persons in need thereof.

e. The commissioner shall seek to secure the use of such funds or other resources from private nonprofit or for-profit sources or the federal government to effectuate the purposes of this act as may be available therefor, which shall be used to supplement and shall not supplant State funds used to carry out the purposes of this act.

f. The commissioner shall seek, to the maximum extent practicable, to coordinate the activities of the program, as applicable, with services provided separately to specific populations, including, but not limited to, veterans of the United States armed forces, persons participating in private or public drug abuse or alcohol treatment programs, and persons with HIV.

C.26:2T-8 Hepatitis C advisory board.

4. a. The commissioner shall establish a hepatitis C advisory board to provide advice and recommendations to the commissioner on, and to monitor, the implementation and operation of the program, and to evaluate the effectiveness of the program in meeting its objectives. The advisory board may also provide advice and recommendations to the commissioner on such other matters relating to hepatitis C as a majority of its members deem appropriate.

b. The commissioner shall appoint as members of the advisory board persons with a demonstrated expertise and interest in hepatitis C, including, but not limited to, health care professionals and persons with hepatitis C, and including representation among the various geographic regions and ethnic groups within the State. The advisory board shall include four physicians who include one internist, one hematologist and two hepatologists; one clinical researcher specializing in diseases of the liver; and two members who are not physicians or clinical researchers, at least one of whom is a veteran of the United States armed forces who has hepatitis C.

c. The members of the advisory board shall serve without compensation, but shall be entitled to reimbursement for necessary expenses incurred in the performance of their duties.

d. The advisory board shall organize as soon as may be practicable after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the board.

C.26:2T-9 Annual report to Governor, Legislature.

5. The commissioner, in consultation with the hepatitis C advisory board, shall report to the Governor and the Legislature, no later than 12 months after the effective date of this act and annually thereafter, on the activities of the program and the effectiveness of the program in meeting its objectives. The report shall clearly describe the guidelines, assessments and strategies employed by the commissioner in developing, implementing and evaluating the program. In addition, the commissioner shall seek to include in the report information on the proportion of acute versus chronic HCV infection among persons with HCV in the State and information about HCV infection that is specific to various populations within the State. The commissioner shall accompany the report with any recommendations that the commissioner desires to make for administrative or legislative action relating to hepatitis C education, prevention, screening or treatment.

6. Section 1 of P.L.1998, c.116 (C.26:2T-1) is amended to read as follows:

C.26:2T-1 Newly diagnosed Hepatitis C cases; information, reports.

1. The Commissioner of Health and Senior Services shall provide for the inclusion of all newly diagnosed cases of hepatitis C among those communicable diseases which are required to be reported by health care providers or other designated persons to the Department of Health and Senior Services pursuant to N.J.A.C.8:57-1.4 and 8:57-1.5. The commissioner shall require that such information be reported directly to the department, rather than to local health departments, as he determines necessary to assist the department to develop hepatitis C disease control measures, and shall revise these requirements as necessary to reflect technological advances which improve the ability to diagnose and treat the disease.

7. This act shall take effect on the 30th day after enactment.

Approved January 6, 2002.

CHAPTER 358

AN ACT concerning inspection of certain records to facilitate the administration of the Tobacco Master Settlement Agreement, amending R.S.54:50-9.

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

1. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9. Nothing herein contained shall be construed to prevent:

- a. The delivery to a taxpayer or the taxpayer's duly authorized representative of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of this subtitle or of any such State tax law;
- b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;
- c. The director, in the director's discretion and subject to reasonable conditions imposed by the director, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the director, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the director, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the director to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub. L.93-647 (42 U.S.C.s.51 et seq.), with the names, home addresses, social security numbers and sources of income and assets of all absent parents who are certified by that agency as being required to pay child support, upon request by the State agency and pursuant to procedures and in a form prescribed by the director;

i. The furnishing by the director to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.);

j. The furnishing by the director to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes;

k. The inspection by the Attorney General or other legal representative of this State of the reports or files of any tobacco product manufacturer, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), for any period in which

that tobacco product manufacturer was not or is not in compliance with subsection a. of section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2), for the purpose of facilitating the administration of the provisions of P.L.1999, c. 148 (C.52:4D-1 et seq.).

2. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 359

AN ACT concerning the taking of menhaden in State coastal waters and amending R.S.23:3-51.

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

1. R.S.23:3-51 is amended to read as follows:

License to take menhaden, prohibited takings.

23:3-51. a. A person intending to take menhaden with purse or shired nets in any waters in the jurisdiction of this State, including the waters of the Atlantic ocean, within three nautical miles of the coast line of this State, shall apply to the commissioner for a license therefor. The commissioner, upon receipt of the application and payment of the fee required pursuant to R.S.23:3-52, may, at the commissioner's discretion, issue to the applicant a license to take menhaden, except as prohibited in subsection b. of this section. The license shall be void after December 31 next succeeding its issuance.

b. Notwithstanding the provisions of subsection a. of this section or any other law, or any rule or regulation adopted pursuant thereto, to the contrary, the commissioner shall not issue a license for the taking of menhaden, and no person may take menhaden, in State coastal waters, including Delaware, Great, Raritan, and Sandy Hook bays, for the purpose of reduction, including conversion to fish meal, oil, and other components.

c. This act shall not affect the taking of menhaden in State coastal waters for the use as bait for commercial or recreational purposes.

2. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 360

AN ACT concerning dam repair, lake dredging and stream cleaning, supplementing Title 58 of the Revised Statutes, and making an appropriation.

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

C.58:4-11 Findings, declarations relative to dam repair, lake dredging and stream cleaning.

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

The Legislature further finds and declares that these conditions have led to the collapse of dams, polluted lakes, stream flooding and property damage to homes, businesses, lake communities and public utilities; and that federal, State and local financial resources have not met adequately the costs of remediating the sites and facilities affected by these conditions.

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

C.58:4-12 "Dam, Lake and Stream Project Fund."

2. a. There is established in the Department of Environmental Protection a dedicated, nonlapsing fund, designated the "Dam, Lake and Stream Project Fund." Moneys in the fund shall be used for the purpose of supplementing the department's capital construction programs that provide funding for dam restoration and repair, lake dredging and restoration, and stream cleaning and desnagging, and to fund the cost of dam inspection as prescribed under subsection f. of this section. There is appropriated from the "Surplus Revenue Fund," established pursuant to P.L.1990, c.44 (C.52:9H-14 et seq.), to the Dam, Lake and Stream Project Fund the sum of \$6,730,000.

b. Moneys in the Dam, Lake and Stream Project Fund are appropriated for State, local or privately-owned projects and may be combined with other State or non-State funding sources.

c. Moneys appropriated from the Dam, Lake and Stream Project Fund may be used by the department to provide loans bearing an interest rate of not more than 2% or other forms of assistance, other than full or matching

grants, to owners of private dams, lakes or streams, in accordance with criteria for existing programs established under previous State bond acts, legislative initiatives, or federal aid guidelines.

d. (1) Loans awarded under this section to owners of private dams or lake associations shall require local government units to act as co-applicants. The cost of payment of the principal and interest on these loans shall be assessed, in the same manner as provided for the assessment of local improvements generally under chapter 56 of Title 40 of the Revised Statutes, against the real estate benefited thereby in proportion to and not in excess of the benefits conferred, and such assessment shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the municipality in which they are imposed, and from the date of confirmation shall be a first and paramount lien upon the real estate assessed to the same extent, and be enforced and collected in the same manner, as assessments for local improvements.

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

e. The moneys appropriated under this section shall be allocated commencing with the fiscal year of enactment in such a manner that (a) the amount allocated to dam restoration and repair shall be \$4,730,000 (b) the amount allocated to lake dredging and restoration and to stream cleaning and desnagging shall be \$2,000,000 and (c) the amount allocated to the Department of Environmental Protection for repair of department-owned dams shall be \$0.00.

f. In addition to the number of individuals employed as inspectors of dams on October 1, 2000, the Department of Environmental Protection is directed to employ nine additional individuals as inspectors of dams and to keep all of the positions, including both those in which individuals were employed as inspectors of dams on October 1, 2000 and those to which the nine additional individuals shall have been appointed thereafter, with employees having educational backgrounds or skills in engineering necessary to conduct the inspection of dams and otherwise to carry out the objectives of this act. The salary costs for the nine additional staff positions shall be charged against the moneys appropriated under subsection a. of this section and allocated under subparagraph (a) of paragraph (2) of subsection e. hereof.

C.58:4-13 Annual report.

3. On or before October 1, 2001, and on or before October 1 of each succeeding year, the Department of Environmental Protection shall submit a written report to the Joint Budget Oversight Committee, or its successor, specifying the nature and location of each project to which funds appropriated under this act shall have been allocated during the preceding State fiscal year; for each project, the names of the individuals, groups and political subdivisions to which the funds so allocated shall have been awarded; the amount awarded to each recipient; whether such amount shall have been awarded as a grant or loan; and in the case of each loan, the terms thereof.

4. This act shall take effect immediately.

Approved January 6, 2002.

CHAPTER 361

AN ACT concerning coverage of certain infant formulas, supplementing Titles 17 and 26 of the Revised Statutes and Title 17B of the New Jersey Statutes, and amending P.L.1992, c.161 and P.L.1992, c.162.

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

C.17:48-6z Hospital service corporation prescription drug plans to cover certain infant formulas.

1. A hospital service corporation which provides hospital or medical expense benefits for expenses incurred in the purchase of prescription drugs under a contract that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits under the contract for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the contract.

This section shall apply to those hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7y Medical service corporation prescription drug plans to cover certain infant formulas.

2. A medical service corporation which provides hospital or medical expense benefits for expenses incurred in the purchase of prescription drugs under a contract that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits under the contract for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the contract.

This section shall apply to those medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-35.24 Health service corporation prescription drug plans to cover certain infant formulas.

3. A health service corporation which provides hospital or medical expense benefits for expenses incurred in the purchase of prescription drugs under a contract that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits under the contract for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the contract.

This section shall apply to those health service corporation contracts in which the health service corporation has reserved the right to change the premium.

C.17B:27-46.1z Group health insurer prescription drug plans to cover certain infant formulas.

4. A group health insurer which provides hospital or medical expense benefits for expenses incurred in the purchase of prescription drugs under a policy that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits under the policy for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the policy.

This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.17B:26-2.1v Individual health insurer prescription drug plans to cover certain infant formulas.

5. An individual health insurer which provides hospital or medical expense benefits for expenses incurred in the purchase of prescription drugs under a policy that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, shall provide benefits under the policy for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the policy.

This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.26:2J-4.25 Health maintenance organization prescription drug plans to cover certain infant formulas.

6. A certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued on or after the effective date of this act for a health maintenance organization that provides health care services for prescription drugs under a contract, unless the health maintenance organization also provides health care services in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The health care services shall be provided to the same extent as for any other prescribed items under the contract.

The provisions of this section shall apply to those contracts for health care services by health maintenance organizations under which the health maintenance organization has reserved the right to change the schedule of charges for enrollee coverage.

7. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to read as follows:

C.17B:27A-7 Establishment of policy, contract forms; high deductible health plan; benefit levels.

6. The board shall establish the policy and contract forms and benefit levels to be made available by all carriers for the health benefits plans required to be issued pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and shall adopt such modifications to one or more plans as the board determines are necessary to make available a "high deductible health plan" or plans consistent with section 301 of Title III of the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, regarding tax-deductible medical savings accounts, within 60 days after the enactment of P.L.1997, c.414 (C.54A:3-4 et al.). The board shall provide the commissioner with an informational filing of the policy and contract forms and benefit levels it establishes.

a. The individual health benefits plans established by the board may include cost containment measures such as, but not limited to: utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; and reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions.

b. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no more than 12 months on coverage for preexisting conditions. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall not contain a preexisting condition limitation of any period under the following circumstances:

(1) to an individual who has, under creditable coverage, with no intervening lapse in coverage of more than 31 days, been treated or diagnosed by a physician for a condition under that plan or satisfied a 12-month preexisting condition limitation; or

(2) to a federally defined eligible individual who applies for an individual health benefits plan within 63 days of termination of the prior coverage.

c. In addition to the five standard individual health benefits plans provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board may develop up to five rider packages. Premium rates for the rider packages shall be determined in accordance with section 8 of P.L.1992, c.161 (C.17B:27A-9).

d. After the board's establishment of the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier shall file the policy or contract forms with the board and certify to the board that the health benefits plans to be used by the carrier are in substantial compliance with the provisions in the corresponding board approved plans. The certification shall be signed by the chief executive officer of the carrier. Upon receipt by the board of the certification, the certified plans may be used until the board, after notice and hearing, disapproves their continued use.

e. Effective immediately for an individual health benefits plan issued on or after the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary date of an individual health benefits plan in effect on the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health

Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this subsection. This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

f. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

8. Section 3 of P.L.1992, c.162 (C.17B:27A-19) is amended to read as follows:

C.17B:27A-19 Five health benefit plans offered to small employers; exceptions.

3. a. Except as provided in subsection f. of this section, every small employer carrier shall, as a condition of transacting business in this State, offer to every small employer the five health benefit plans as provided in this section. The board shall establish a standard policy form for each of the five plans, which except as otherwise provided in subsection j. of this section, shall be the only plans offered to small groups on or after January 1, 1994. One policy form shall contain the benefits 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). In the case of indemnity carriers, one policy form shall be established which contains benefits and cost sharing levels which are equivalent to the health benefits plans of health maintenance organizations pursuant to the "Health Maintenance Organization Act of 1973," Pub.L.93-222 (42 U.S.C. s.300e et seq.). The remaining policy forms shall contain basic hospital and medical-surgical benefits, including, but not limited to:

- (1) Basic inpatient and outpatient hospital care;
- (2) Basic and extended medical-surgical benefits;
- (3) Diagnostic tests, including X-rays;
- (4) Maternity benefits, including prenatal and postnatal care; and
- (5) Preventive medicine, including periodic physical examinations and inoculations.

At least three of the forms shall provide for major medical benefits in varying lifetime aggregates, one of which shall provide at least \$1,000,000 in lifetime aggregate benefits. The policy forms provided pursuant to this section shall contain benefits representing progressively greater actuarial values.

Notwithstanding the provisions of this subsection to the contrary, the board also may establish additional policy forms by which a small employer carrier, other than a health maintenance organization, may provide indemnity benefits for health maintenance organization enrollees by direct contract with the enrollees' small employer through a dual arrangement with the health maintenance organization. The dual arrangement shall be filed with the commissioner for approval. The additional policy forms shall be consistent with the general requirements of P.L.1992, c.162 (C.17B:27A-17 et seq.).

b. Initially, a carrier shall offer a plan within 90 days of the approval of such plan by the commissioner. Thereafter, the plans shall be available to all small employers on a continuing basis. Every small employer which elects to be covered under any health benefits plan who pays the premium therefor and who satisfies the participation requirements of the plan shall be issued a policy or contract by the carrier.

c. The carrier may establish a premium payment plan which provides installment payments and which may contain reasonable provisions to ensure payment security, provided that provisions to ensure payment security are uniformly applied.

d. In addition to the five standard policies described in subsection a. of this section, the board may develop up to five rider packages. Any such package which a carrier chooses to offer shall be issued to a small employer who pays the premium therefor, and shall be subject to the rating methodology set forth in section 9 of P.L.1992, c.162 (C.17B:27A-25).

e. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may approve a health benefits plan containing only medical-surgical benefits or major medical expense benefits, or a combination thereof, which is issued as a separate policy in conjunction with a contract of insurance for hospital expense benefits issued by a hospital service corporation, if the health benefits plan and hospital service corporation contract combined otherwise comply with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.). Deductibles and coinsurance limits for the contract combined may be allocated between the separate contracts at the discretion of the carrier and the hospital service corporation.

f. Notwithstanding the provisions of this section 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. s.300e et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section.

Notwithstanding the provisions of this section to the contrary, a health maintenance organization which is approved pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section, except that the plans shall provide the same level of benefits as required for a federally qualified health maintenance organization, including any requirements concerning copayments by enrollees.

g. A carrier shall not be required to own or control a health maintenance organization or otherwise affiliate with a health maintenance organization in order to comply with the provisions of this section, but the carrier shall be required to offer the five health benefits plans which are formulated by the board and approved by the commissioner, including one plan which contains benefits and cost sharing levels that are equivalent to those required for health maintenance organizations.

h. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may modify the benefits 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).

i. (1) In addition to the rider packages provided for in subsection d. of this section, every carrier may offer, in connection with the five health benefits plans required to be offered by this section, any number of riders which may revise the coverage offered by the five plans in any way, provided, however, that any form of such rider or amendment thereof which decreases benefits or decreases the actuarial value of one of the five plans

shall be filed for informational purposes with the board and for approval by the commissioner before such rider may be sold. Any rider or amendment thereof which adds benefits or increases the actuarial value of one of the five plans shall be filed with the board for informational purposes before such rider may be sold.

The commissioner shall disapprove any rider filed pursuant to this subsection that is unjust, unfair, inequitable, unreasonably discriminatory, misleading, contrary to law or the public policy of this State. The commissioner shall not approve any rider which reduces benefits below those required by sections 55, 57 and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3) and required to be sold pursuant to this section. The commissioner's determination shall be in writing and shall be appealable.

(2) The benefit riders provided for in paragraph (1) of this subsection shall be subject to the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-19, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25, and 17B:27A-27).

j. (1) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a health benefits plan issued by or through a carrier, association, multiple employer arrangement prior to January 1, 1994 or, if the requirements of subparagraph (c) of paragraph (6) of this subsection are met, issued by or through an out-of-State trust prior to January 1, 1994, at the option of a small employer policy or contract holder, may be renewed or continued after February 28, 1994, or in the case of such a health benefits plan whose anniversary date occurred between March 1, 1994 and the effective date of P.L.1994, c.11 (C.17B:27A-19.1 et al.), may be reinstated within 60 days of that anniversary date and renewed or continued if, beginning on the first 12-month anniversary date occurring on or after the sixtieth day after the board adopts regulations concerning the implementation of the rating factors permitted by section 9 of P.L.1992, c.162 (C.17B:27A-25) and, regardless of the situs of delivery of the health benefits plan, the health benefits plan renewed, continued or reinstated pursuant to this subsection complies with the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-19, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25 and 17B:27A-27) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

Nothing in this subsection shall be construed to require an association, multiple employer arrangement or out-of-State trust to provide health benefits coverage to small employers that are not contemplated by the organizational documents, bylaws, or other regulations governing the purpose and operation of the association, multiple employer arrangement or out-of-State trust. Notwithstanding the foregoing provision to the contrary,

an association, multiple employer arrangement or out-of-State trust that offers health benefits coverage to its members' employees and dependents:

(a) shall offer coverage to all eligible employees and their dependents within the membership of the association, multiple employer arrangement or out-of-State trust;

(b) shall not use actual or expected health status in determining its membership; and

(c) shall make available to its small employer members at least one of the standard benefits plans, as determined by the commissioner, in addition to any health benefits plan permitted to be renewed or continued pursuant to this subsection.

(2) Notwithstanding the provisions of this subsection to the contrary, a carrier or out-of-State trust which writes the health benefits plans required pursuant to subsection a. of this section shall be required to offer those plans to any small employer, association or multiple employer arrangement.

(3) (a) A carrier, association, multiple employer arrangement or out-of-State trust may withdraw a health benefits plan marketed to small employers that was in effect on December 31, 1993 with the approval of the commissioner. The commissioner shall approve a request to withdraw a plan, consistent with regulations adopted by the commissioner, only on the grounds that retention of the plan would cause an unreasonable financial burden to the issuing carrier, taking into account the rating provisions of section 9 of P.L.1992, c.162 (C.17B:27A-25) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

(b) A carrier which has renewed, continued or reinstated a health benefits plan pursuant to this subsection that has not been newly issued to a new small employer group since January 1, 1994, may, upon approval of the commissioner, continue to establish its rates for that plan based on the loss experience of that plan if the carrier does not issue that health benefits plan to any new small employer groups.

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

(5) A health benefits plan that otherwise conforms to the requirements of this subsection shall be deemed to be in compliance with this subsection, notwithstanding any change in the plan's deductible or copayment.

(6) (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, a health benefits plan renewed, continued or reinstated pursuant to this subsection shall be filed with the commissioner for informational purposes within 30 days after its renewal date. No later than 60 days after the board adopts regulations concerning the implementation of the rating factors permitted by section 9 of P.L.1992, c.162 (C.17B:27A-25) the filing shall be amended to show any modifications in the plan that are necessary to comply with the provisions of this subsection. The commissioner shall

monitor compliance of any such plan with the requirements of this subsection, except that the board shall enforce the loss ratio requirements.

(b) A health benefits plan filed with the commissioner pursuant to subparagraph (a) of this paragraph may be amended as to its benefit structure if the amendment does not reduce the actuarial value and benefits coverage of the health benefits plan below that of the lowest standard health benefits plan established by the board pursuant to subsection a. of this section. The amendment shall be filed with the commissioner for approval pursuant to the terms of sections 4, 8, 12 and 25 of P.L.1995, c.73 (C.17:48-8.2, 17:48A-9.2, 17:48E-13.2 and 26:2J-43), N.J.S.17B:26-1 and N.J.S.17B:27-49, as applicable, and shall comply with the provisions of sections 2 and 9 of P.L.1992, c.162 (C.17B:27A-18 and 17B:27A-25) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

(c) A health benefits plan issued by a carrier through an out-of-State trust shall be permitted to be renewed or continued pursuant to paragraph (1) of this subsection upon approval by the commissioner and only if the benefits offered under the plan are at least equal to the actuarial value and benefits coverage of the lowest standard health benefits plan established by the board pursuant to subsection a. of this section. For the purposes of meeting the requirements of this subparagraph, carriers shall be required to file with the commissioner the health benefits plans issued through an out-of-State trust no later than 180 days after the date of enactment of P.L.1995, c.340. A health benefits plan issued by a carrier through an out-of-State trust that is not filed with the commissioner pursuant to this subparagraph, shall not be permitted to be continued or renewed after the 180-day period.

(7) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, an association, multiple employer arrangement or out-of-State trust may offer a health benefits plan authorized to be renewed, continued or reinstated pursuant to this subsection to small employer groups that are otherwise eligible pursuant to paragraph (1) of subsection j. of this section during the period for which such health benefits plan is otherwise authorized to be renewed, continued or reinstated.

(8) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a carrier, association, multiple employer arrangement or out-of-State trust may offer coverage under a health benefits plan authorized to be renewed, continued or reinstated pursuant to this subsection to new employees of small employer groups covered by the health benefits plan in accordance with the provisions of paragraph (1) of this subsection.

(9) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) or P.L.1992, c.161 (C.17B:27A-2 et seq.) to the contrary, any individual, who is eligible for small employer coverage under a policy

issued, renewed, continued or reinstated pursuant to this subsection, but who would be subject to a preexisting condition exclusion under the small employer health benefits plan, or who is a member of a small employer group who has been denied coverage under the small employer group health benefits plan for health reasons, may elect to purchase or continue coverage under an individual health benefits plan until such time as the group health benefits plan covering the small employer group of which the individual is a member complies with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.).

(10) In a case in which an association made available a health benefits plan on or before March 1, 1994 and subsequently changed the issuing carrier between March 1, 1994 and the effective date of P.L.1995, c.340, the new issuing carrier shall be deemed to have been eligible to continue and renew the plan pursuant to paragraph (1) of this subsection.

(11) In a case in which an association, multiple employer arrangement or out-of-State trust made available a health benefits plan on or before March 1, 1994 and subsequently changes the issuing carrier for that plan after the effective date of P.L.1995, c.340, the new issuing carrier shall file the health benefits plan with the commissioner for approval in order to be deemed eligible to continue and renew that plan pursuant to paragraph (1) of this subsection.

(12) In a case in which a small employer purchased a health benefits plan directly from a carrier on or before March 1, 1994 and subsequently changes the issuing carrier for that plan after the effective date of P.L.1995, c.340, the new issuing carrier shall file the health benefits plan with the commissioner for approval in order to be deemed eligible to continue and renew that plan pursuant to paragraph (1) of this subsection.

Notwithstanding the provisions of subparagraph (b) of paragraph (6) of this subsection to the contrary, a small employer who changes its health benefits plan's issuing carrier pursuant to the provisions of this paragraph, shall not, upon changing carriers, modify the benefit structure of that health benefits plan within six months of the date the issuing carrier was changed.

k. Effective immediately for a health benefits plan issued on or after the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.), the health benefits plans required pursuant to this section, including any plans offered by a State approved or federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of

P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunization as recommended by the Advisory Committee on Immunization Practices of the United State Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this subsection. This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

l. The board shall consider including benefits for speech-language pathology and audiology services, as rendered by speech-language pathologists and audiologists within the scope of their practices, in at least one of the five standard policies and in at least one of the five riders to be developed under this section.

m. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits plans required pursuant to this section that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

9. This act shall take effect on the 60th day following enactment

Approved January 6, 2002.

CHAPTER 362

AN ACT concerning probation officers, supplementing Title 2B of the New Jersey Statutes, amending N.J.S.2C:39-6.

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

C.2B:10A-1 Findings, declarations relative to probation officers.

1. The Legislature finds and declares that:
 - a. The enforcement of probation sentences is crucial to the public safety;
 - b. Despite a drop in the overall crime rate, the number of dangerous and repeat offenders who are serving probation sentences has continued to rise in New Jersey;
 - c. The number of probationers who have violated the conditions of probation and have a warrant issued for their arrest has reached 15,000;
 - d. Probation officers working in the New Jersey State courts are not currently permitted to enforce these warrants;
 - e. Probation officers in other states are permitted to act as law enforcement officers.

C.2B:10A-2 "Probation Officer Community Safety Unit."

2. a. There shall be established within the Administrative Office of the Courts a "Probation Officer Community Safety Unit." The "Probation Officer Community Safety Unit" shall consist of no less than 200 probation officers, duly appointed pursuant to the provisions of N.J.S.2A:168-5, who shall be authorized to carry a firearm provided the carrying is in accordance with the authority provided in paragraph (17) of subsection c. of N.J.S.2C:39-6 and such rules as are adopted by the Supreme Court regarding the carrying of a firearm by a probation officer. The probation officer shall undergo a course of law enforcement training as administered by the Police Training Commission which training shall be subject to and in accordance with rules adopted by the Supreme Court. A probation officer in the "Probation Officer Community Safety Unit" shall have the authority to arrest, detain and transport probationers and enforce the criminal laws of this State in accordance with such conditions and guidelines as set forth in rules adopted by the Supreme Court and shall be empowered to enforce warrants for the apprehension and arrest of probationers who violate the conditions of their probation sentence.

b. A "Probation Officer Community Safety Unit" shall be assigned to every county and consist of no less than five probation officers.

c. Prior to being permitted to carry a firearm, a probation officer assigned to the "Probation Officer Community Safety Unit" shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

C.2B:10A-3 Self-defense training for probation officers.

3. Any probation officer, duly appointed pursuant to the provisions of N.J.S.2A:168-5, including probation officers assigned to the "Probation Officer Community Safety Unit" established pursuant to section 2 of P.L.2001, c.362 (C.2B:10A-2), shall undergo a basic course of self-defense training administered by the Police Training Commission which training shall be subject to and in accordance with rules adopted by the Supreme Court.

4. N.J.S.2C:39-6 is amended to read as follow:

Exemptions.

2C:39-6. a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park ranger, or State conservation officer;

(5) A prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer,

or a correction officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;

(7) (a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c.439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection b. of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons;

(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c.409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, such a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(9) A juvenile corrections officer in the employment of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) subject to the regulations promulgated by the commission.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the

chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which he may be required to carry, while in the actual performance of his official duties and while going to or from his place of duty, or any other police officer, while in the actual performance of his official duties;

(2) A State deputy conservation officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of his official duties;

(3) (Deleted by amendment, P.L.1986, c.150.)

(4) A court attendant serving as such under appointment by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of his official duties;

(5) A guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of his official duties;

(6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;

(7) An officer of the Society for the Prevention of Cruelty to Animals, while in the actual performance of his duties;

(8) An employee of a public utilities corporation actually engaged in the transportation of explosives;

(9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that he has passed an approved police academy training program consisting of at least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;

(10) A campus police officer appointed under P.L.1970, c.211 (C.18A:6-4.2 et seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission,

pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(11) A person who has not been convicted of a crime under the laws of this State or under the laws of another state or the United States, and who is employed as a full-time security guard for a nuclear power plant under the license of the Nuclear Regulatory Commission, while in the actual performance of his official duties;

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c.291 (C.27:25-15.1);

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c.210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c.362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is

unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has

filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing

business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and Senior Services and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health and Senior Services.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the

institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

1. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including a retirement because of a disability pursuant to section 6 of P.L.1944, c.255 (C.43:16A-6), section 7 of P.L.1944, c.255 (C.43:16A-7), section 1 of P.L.1989, c.103 (C.43:16A-6.1) or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of five or more years prior to his disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of his usual law enforcement duties and any other available duty in the department which his employer was willing to assign to him or does not subject that retired officer to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun he is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is less than 70 years of age, and who was regularly employed as a full-time member of the State Police; a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State; a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's officer of a county of this State; a full-time State or county corrections officer; a full-time county park police officer; a full-time county prosecutor's detective or investigator; or a full-time federal law enforcement officer from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section under the conditions provided herein:

(1) The retired law enforcement officer, within six months after retirement, shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.

(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:

- (a) The name and address of the retired officer;
- (b) The date that the retired officer was hired and the date that the officer retired;
- (c) A list of all handguns known to be registered to that officer;
- (d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and
- (e) A statement that the officer retired in good standing.

(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.

(4) The superintendent shall issue to an approved retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for one year from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.

(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request a hearing in the Superior Court of New Jersey in the county in which he resides by filing a written request for such a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of such a hearing shall be in accordance with law and the rules governing the courts of this State.

(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, his identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein he resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth in this subsection.

m. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish, Game and Wildlife, while in the actual performance of duties, from possessing, transporting or using any device that projects, releases or emits any substance specified as being non-injurious to wildlife by the Director of the Division of Animal Health in the Department of Agriculture, and which may immobilize wildlife and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the purpose of repelling bear or other animal attacks or for the aversive conditioning of wildlife.

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish, Game and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.

5. The Administrative Director of the Courts shall report within 18 months of this act's effective date to the presiding officers of the Senate and General Assembly regarding the effectiveness of the "Probation Officer Community Safety Unit" established pursuant to section 2 of P.L.2001, c.362 (C.2B:10A-2) in tracking and apprehending probationers.

6. This act shall take effect immediately.

Approved January 7, 2002.

CHAPTER 363

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130 there is appropriated out of the General Fund the following sum for the purpose specified:

54 DEPARTMENT OF HUMAN SERVICES
50 Economic Planning, Development and Security
53 Economic Assistance and Security
7570 Division of Youth and Family Services
GRANTS-IN-AID

16-7570 Services to Children and Families	<u>\$1,000,000</u>
<i>Grants-in-Aid:</i>	
16 Regional Child Abuse Treatment Centers	(\$1,000,000)

2. The amount appropriated for Regional Child Abuse Treatment Centers is allocated in the amount of up to \$500,000 each for capital costs associated with the construction or expansion of the centers affiliated with the Hackensack University Medical Center and the Center for Children's Support at the University of Medicine and Dentistry of New Jersey. The allocation of State funds to each center for construction or expansion shall be made on the condition that each center generate from federal grants or private donations, funds equal to the amount of State funds allocated for construction or expansion.

The funds generated by each center from federal grants or private donations shall include the value of any land donated to each center by the Hackensack University Medical Center or the University of Medicine and Dentistry of New Jersey, as applicable, for construction or expansion. The funds generated by each center from federal grants or private donations prior to each center's receipt of State funds shall count toward the amount of funds each center is required to generate as a condition of receiving State funds.

3. This act shall take effect immediately.

Approved January 7, 2002.

CHAPTER 364

AN ACT concerning certain surveys conducted by school districts and supplementing chapter 36 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:36-34 School surveys, certain, parental consent required before administration.

1. a. Unless a school district receives prior written informed consent from a student's parent or legal guardian and provides for a copy of the document to be available for viewing at convenient locations and time periods, the school district shall not administer to a student any academic or nonacademic survey, assessment, analysis or evaluation which reveals information concerning:

- (1) political affiliations;
- (2) mental and psychological problems potentially embarrassing to the student or the student's family;
- (3) sexual behavior and attitudes;
- (4) illegal, anti-social, self-incriminating and demeaning behavior;
- (5) critical appraisals of other individuals with whom a respondent has a close family relationship;
- (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- (7) income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program; or
- (8) social security number.

b. The school district shall request prior written informed consent at least two weeks prior to the administration of the survey, assessment, analysis or evaluation.

c. A student shall not participate in any survey, assessment, analysis or evaluation that concerns the issues listed in subsection a. of this section unless the school district has obtained prior written informed consent from that student's parent or guardian.

d. A school district that violates the provisions of this act shall be subject to such monetary penalties as determined by the commissioner.

2. This act shall take effect immediately.

Approved January 7, 2002.

CHAPTER 365

AN ACT concerning restraining orders for certain offenders, amending and supplementing P.L.1999, c.334 and making an appropriation.

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

1. Section 3 of P.L.1999, c. 334 (C.2C:35-5.6) is amended to read as follows:

C.2C:35-5.6 Definitions relative to removal, restraint of certain offenders.

3. Definitions.

As used in this act:

a. "Person" means any person charged with or convicted of a criminal offense or any juvenile charged with delinquency or adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense.

b. "Place" includes any premises, residence, business establishment, location or specified area including all buildings and all appurtenant land, in which or at which a criminal offense occurred or is alleged to have occurred or is affected by the criminal offense with which the person is charged. "Place" does not include public rail, bus or air transportation lines or limited access highways which do not allow pedestrian access.

c. "Criminal offense" means:

(1) any of the following: N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, N.J.S.2C:35-8, N.J.S.2C:35-9, P.L.1997, c.185 (C.2C:35-4.1), sections 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or C.2C:35-5.3), P.L.1987, c.101 (C.2C:35-7) or P.L.1997, c.327 (C.2C:35-7.1), or

(2) the unlawful possession or use of an assault firearm as defined in subsection w. of N.J.S.2C:39-1.

2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read as follows:

C.2C:35-5.7 Issuance of order by court.

Issuance of order by court.

4. a. When a person is charged with a criminal offense on a warrant and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall as a

condition of release issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

b. When a person is charged with a criminal offense on a summons, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

c. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released from custody at a detention hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

d. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released without being detained pursuant to section 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35), the law enforcement officer or prosecuting attorney shall prepare an application pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) for filing on the next court day.

The law enforcement officer releasing the juvenile shall serve the juvenile and his parent or guardian with written notice that an order shall be issued by the Family Part of the Superior Court on the next court day prohibiting the juvenile from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subsection e. of this section.

e. The court may forego issuing a restraining order for which application has been made pursuant to section 3 of P.L. 2001, c.365

(C.2C:35-5.9) only if the defendant establishes by clear and convincing evidence that:

(1) the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such an event, the court shall not issue an order pursuant to this section unless the court is clearly convinced that the need to bar the person from the place in order to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place. If the balance of the interests of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place; or

(2) the issuance of an order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of persons residing in or having business in the place.

f. A restraining order issued pursuant to subsection a., b., c., d. or h. of this section shall describe the place from which the person has been barred and any conditions upon the person's entry into the place, with sufficient specificity to enable the person to guide his conduct accordingly and to enable a law enforcement officer to enforce the order. The order shall also prohibit the person from entering an area of up to 500 feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of this act. In the discretion of the court, the order may contain modifications to permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours. When appropriate, the court may append to the order a map depicting the place. The person shall be given a copy of the restraining order and any appended map and shall acknowledge in writing the receipt thereof.

g. (1) The court shall provide notice of the restraining order to the local law enforcement agency where the arrest occurred and to the county prosecutor.

(2) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, the local law enforcement agency may post a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, upon one or more of the principal entrances of the place or in any other conspicuous location. Such posting shall be for the purpose of informing the public, and the failure to post a copy of the order shall in no way excuse any violation of the order.

(3) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of

delinquency for a criminal offense, any law enforcement agency may publish a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, in a newspaper circulating in the area of the restraining order. Such publication shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

(4) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may distribute copies of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, to residents or businesses located within the area delineated in the order or, in the case of a school or any government-owned property, to the appropriate administrator, or to any tenant association representing the residents of the affected area. Such distribution shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

h. When a person is convicted of or adjudicated delinquent for any criminal offense, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, by separate order or within the judgment of conviction, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section. Upon the person's conviction or adjudication of delinquency for a criminal offense, a law enforcement agency, in addition to posting, publishing, and distributing the order or an equivalent notice pursuant to paragraphs (2), (3) and (4) of subsection g. of this section, may also post, publish and distribute a photograph of the person.

i. When a juvenile has been adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense, in addition to an order required by subsection h. of this section or any other disposition authorized by law, the court may order the juvenile and any parent, guardian or any family member over whom the court has jurisdiction to take such actions or obey such restraints as may be necessary to facilitate the rehabilitation of the juvenile or to protect public safety or to safeguard or enforce the rights of residents of the place. The court may commit the juvenile to the care of the Department of Human Services under the responsibility of the Division of Youth and Family Services until such time as the juvenile reaches the age of 18 or until the order of removal and

restraint expires, whichever first occurs, or to such alternative residential placement as is practicable.

j. An order issued pursuant to subsection a., b., c. or d. of this section shall remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. An order issued pursuant to subsection h. of this section shall remain in effect for such period of time as shall be fixed by the court but not longer than the maximum term of imprisonment or incarceration allowed by law for the underlying offense or offenses. When the court issues a restraining order pursuant to subsection h. of this section and the person is also sentenced to any form of probationary supervision or participation in the Intensive Supervision Program, the court shall make continuing compliance with the order an express condition of probation or the Intensive Supervision Program. When the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order shall be made an express condition of the person's release from confinement or incarceration on parole. At the time of sentencing or, in the case of a juvenile, at the time of disposition of the juvenile case, the court shall advise the defendant that the restraining order shall include a fixed time period in accordance with this subsection and shall include that provision in the judgment of conviction, dispositional order, separate order or order vacating an existing restraining order, to the law enforcement agency that made the arrest and to the county prosecutor.

k. All applications to stay or modify an order issued pursuant to this act, including an order originally issued in municipal court, shall be made in the Superior Court. The court shall immediately notify the county prosecutor in writing whenever an application is made to stay or modify an order issued pursuant to this act. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense as defined in subsection b. of this section shall not become final for ten days in order to permit the appeal of the court's findings by the prosecution.

l. Nothing in this section shall be construed in any way to limit the authority of the court to take such other actions or to issue such orders as may be necessary to protect the public safety or to safeguard or enforce the rights of others with respect to the place.

m. Notwithstanding any other provision of this section, the court may permit the person to return to the place to obtain personal belongings and effects and, by court order, may restrict the time and duration and provide for police supervision of such a visit.

C.2C:35-5.9 Certification of offense location.

3. Certification of Offense Location.

The court shall issue a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

C.2C:35-5.10 Discretion to not seek restraining order.

4. Discretion to Not Seek Restraining Order.

A law enforcement officer or prosecuting attorney shall have discretion to not seek a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense resulting from the stop of a motor vehicle, if the defendant was using public transportation, or if the provisions of paragraph (1) or (2) of subsection e. of section 4 of P.L.1999, c.334 (C.2C:35-5.7) are applicable.

5. There is appropriated from the General Fund to the Administrative Office of the Courts \$50,000 for the modification of the judiciary's automated systems in accordance with the implementation of this act.

6. This act shall take effect on the 120th day following enactment except for section 5, which shall take effect immediately.

Approved January 7, 2002.

CHAPTER 366

AN ACT concerning retirement benefits for county prosecutors, certain assistant and deputy attorneys general, certain criminal investigators and the Director of the Division of Criminal Justice in the Department of Law and Public Safety and supplementing P.L.1954, c.84 (C.43:15A-1 et seq.).

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

C.43:15A-155 Definitions relative to Prosecutors Part in PERS.

1. As used in this act, P.L.2001, c.366 (C.43:15A-155 et seq.):

"Service" includes service as (1) a county prosecutor, first assistant prosecutor or assistant prosecutor as defined in N.J.S.2A:158-1 et seq.; (2) the Director of the Division of Criminal Justice in the Department of Law and Public Safety; (3) an assistant director, deputy director, assistant attorney general or deputy attorney general in that department and

assigned to that division pursuant to P.L.1970, c.74 (C.52:17B-97 et seq.); or (4) a criminal investigator in the Division of Criminal Justice in the Department of Law and Public Safety who is not eligible for enrollment in the Police and Firemen's Retirement System, established pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.).

"Beneficiary" means any person entitled to receive any benefit pursuant to the provisions of this act by reason of the death of a prosecutor or retirant.

"Final compensation" means the annual salary received by the member of the Prosecutors Part at the time of retirement or death.

"Retirant" means any former member of the Prosecutors Part receiving a pension or retirement allowance as provided by this act.

"Prosecutor" means (1) a county prosecutor, first assistant prosecutor or assistant prosecutor as defined in N.J.S.2A:158-1 et seq.; (2) the Director of the Division of Criminal Justice in the Department of Law and Public Safety; (3) an assistant director, deputy director, assistant attorney general or deputy attorney general in that department and assigned to that division pursuant to P.L.1970, c.74 (C.52:17B-97 et seq.); or (4) a criminal investigator in the Division of Criminal Justice in the Department of Law and Public Safety who is not eligible for enrollment in the Police and Firemen's Retirement System.

C.43:15A-156 Prosecutors to be members of Prosecutors Part.

2. a. Notwithstanding the provisions of any other law, prosecutors shall be members of the Prosecutors Part, established pursuant to P.L.2001, c.366 (C.43:15A-155 et seq.), of the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), and shall be subject to the same membership and benefit provisions as State employees, except as provided by P.L.2001, c.366. Membership in the retirement system shall be a condition of employment for service as a prosecutor. Any service credit which has been established in the Public Employees' Retirement System by a prosecutor prior to the effective date of this act shall be established in the Prosecutors Part without further assessment of cost to the prosecutor.

b. All outstanding obligations, such as loans, purchases and other arrearage, shall be satisfied by a prosecutor as previously scheduled for payment to the Public Employees' Retirement System.

C.43:15A-157 Separate account for each prosecutor, rate.

3. a. Notwithstanding the provisions of section 25 of P.L.1954, c.84 (C.43:15A-25) to the contrary, a separate account shall be established in the annuity savings fund for each prosecutor and all contributions based on the prosecutor's salary shall be credited to this account.

b. A prosecutor shall contribute at a rate established by the board, which contribution shall be deducted from the salary at the time or times it is paid, and which shall be exclusive of any other contribution required of the prosecutor for Social Security, contributory death benefits or deductions for any other purpose.

c. A prosecutor who is enrolled on the basis of other public service before, during, or after service as a prosecutor shall contribute for such other service at the rate of contribution required of other members as provided by section 25.

C.43:15A-158 Retirement on service retirement allowance, formula.

4. a. Any member of the Prosecutors Part who has attained age 55 years may retire on a service retirement allowance by filing with the retirement system a written application, duly attested, stating at what time subsequent to the execution and filing thereof the member desires to be retired. The board of trustees shall retire the member at the time specified or at such other time within one month after the date so specified as the board finds advisable. Any prosecutor in service who attains age 70 years shall be retired by the board of trustees on a service retirement allowance forthwith on the first day of the next calendar month or at such time within one month thereafter as it finds advisable, except that a prosecutor attaining age 70 years may be continued in service on an annual basis upon written notice to the retirement system by the Attorney General or the Board of Chosen Freeholders of the county employing the prosecutor.

b. Upon retirement for service a prosecutor shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the prosecutor's aggregate contributions and

(2) A pension in the amount which, when added to the prosecutor's annuity, will provide a total retirement allowance of one-sixtieth of average final compensation multiplied by the number of years of creditable service, or 2% of average final compensation multiplied by the number of years of creditable service up to 30 plus 1% of average final compensation multiplied by the number of years of creditable service over 30, or 50% of final compensation if the prosecutor has established 20 or more years of creditable service, whichever is greater.

c. Any prosecutor as of the effective date of P.L.2001, c.366 (C.43:15A-155 et seq.) who has 20 or more years of creditable service at the time of retirement shall be entitled to receive a retirement allowance equal to 50% of final compensation plus, in the case of a prosecutor required to retire pursuant to the provisions of subsection a. of this

section, 3% of final compensation multiplied by the number of years of creditable service over 20 but not over 25.

d. Upon the receipt of proper proofs of the death of a prosecutor who has retired on a service retirement allowance, there shall be paid to the prosecutor's beneficiary an amount equal to one-half of the compensation upon which contributions by the prosecutor to the annuity savings fund were based in the last year of creditable service.

C.43:15A-159 "Special retirement" after 25 years of creditable service. formula.

5. Should a member of the Prosecutors Part resign after having established 25 years of creditable service, the prosecutor may elect "special retirement," provided, that such election is communicated by the prosecutor to the retirement system by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof the prosecutor desires to be retired. The prosecutor shall receive, in lieu of the payment provided in section 4 of P.L.2001, c.366 (C.43:15A-158), a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the prosecutor's aggregate contributions and

(2) A pension in the amount which, when added to the prosecutor's annuity, will provide a total retirement allowance of 65% of final compensation, plus 1% of final compensation multiplied by the number of years of creditable service over 25 but not over 30.

The board of trustees shall retire the prosecutor at the time specified or at such other time within one month after the date so specified as the board finds advisable.

Upon the receipt of proper proofs of the death of such a retirant, there shall be paid to the retirant's beneficiary an amount equal to one-half of the final compensation received by the prosecutor.

C.43:15A-160 Payments for separation after 10 years of service before age 55; deferred retirement.

6. Should a prosecutor, after having established 10 years of creditable service, be separated voluntarily or involuntarily from the service, before reaching age 55, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive the payments provided for in section 4 or 5 of P.L.2001, c.366 (C.43:15A-158 or C.43:15A-159), or a deferred retirement allowance, beginning on the first day of the month following the prosecutor's attainment of age 55 and the filing of an application therefor, which shall consist of:

(1) An annuity which shall be the actuarial equivalent of prosecutor's aggregate contributions at the time of severance from the service and

(2) A pension in the amount which, when added to the prosecutor's annuity, will provide a total retirement allowance of 2% of final compensation multiplied by the number of years of creditable service up to 30 plus 1% of final compensation multiplied by the number of years of creditable service over 30, provided that such inactive prosecutor may elect to receive payments provided under section 4 or 5 of P.L.2001, c.366 (C.43:15A-158 or C.43:15A-159), if the prosecutor had qualified under that section at the time of leaving service, except that in order to avail himself or herself of the option, the prosecutor must exercise such option at least 30 days before the effective date of retirement. If such inactive prosecutor shall die before attaining age 55, the prosecutor's aggregate contributions shall be paid in accordance with subsection c. of section 41 of P.L.1954, c.84 (C.43:15A-41). If such inactive prosecutor shall die after attaining age 55 but before filing an application for retirement benefits pursuant to this section or section 5 of P.L.2001, c.366 (C.43:15A-159) and has not withdrawn his or her aggregate contributions, or in the event of death after retirement, an amount equal to the accumulated deductions plus one-half of the compensation upon which contributions by the prosecutor to the annuity savings fund were based in the last year of creditable service shall be paid to such prosecutor's beneficiary.

Any prosecutor who, having elected to receive a deferred retirement allowance, again becomes a prosecutor covered by the Prosecutors Part of the retirement system while under the age of 55, shall thereupon be reenrolled. If the prosecutor had discontinued service for more than two consecutive years, subsequent contributions shall be at the prosecutor's former rate increased for the years of inactive membership. The prosecutor shall be credited with all service as a member of the Prosecutors Part standing to the prosecutor's credit at the time of an election to receive a deferred retirement allowance.

C.43:15A-161 State liability for increased county pension costs.

7. The State shall be liable for any increased pension costs to a county as a result of the enrollment of prosecutors, first assistant prosecutors and assistant prosecutors in the Prosecutors Part, established pursuant to P.L.2001, c.366 (C.43:15A-155 et seq.), of the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.). The actuary for the Public Employees' Retirement System shall determine the unfunded accrued liability for the Prosecutors Part of the retirement system and the benefits provided for prosecutors under that part in the same manner provided for the determination of the unfunded accrued liability of the retirement system by section 24 of P.L.1954, c.84 (C.43:15A-24). This unfunded accrued liability shall be

amortized in the manner provided by section 24 over an amortization period of 30 years.

8. This act shall take effect immediately.

Approved January 7, 2002.

CHAPTER 367

AN ACT concerning health benefits plans, amending and supplementing P.L.1997, c.192, and supplementing Title 17 of the Revised Statutes, Title 17B of the New Jersey Statutes, P.L.1973, c.337 (C.26:2J-1 et seq.) and P.L.1961, c.49 (C.52:14-17.25 et seq.).

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

1. Section 5 of P.L.1997, c.192 (C.26:2S-5) is amended to read as follows:

C.26:2S-5 Additional disclosure requirements.

5. a. In addition to the disclosure requirements provided in section 4 of this act, a carrier which offers a managed care plan shall disclose to a subscriber, in writing, in a manner consistent with the "Life and Health Insurance Policy Language Simplification Act," P.L.1979, c.167 (C.17B:17-17 et seq.), the following information at the time of enrollment and annually thereafter:

(1) A current participating provider directory providing information on a covered person's access to primary care physicians and specialists, including the number of available participating physicians, by provider category or specialty and by county. The directory shall include the professional office address of a primary care physician and any hospital affiliation the primary care physician has. The directory shall also provide information about participating hospitals.

The carrier shall promptly notify each covered person prior to the termination or withdrawal from the carrier's provider network of the covered person's primary care physician;

(2) General information about the financial incentives between participating physicians under contract with the carrier and other participating health care providers and facilities to which the participating physicians refer their managed care patients;

(3) The percentage of the carrier's managed care plan's network physicians who are board certified;

(4) The carrier's managed care plan's standard for customary waiting times for appointments for urgent and routine care;

(5) The availability through the department, upon request of a member of the general public, of independent consumer satisfaction survey results and an analysis of quality outcomes of health care services of managed care plans in the State;

(6) Information about the Managed Health Care Consumer Assistance Program established pursuant to P.L.2001, c.14 (C.26:2S-19 et al.) as prescribed by regulation of the commissioner, including the toll-free telephone number available to contact the program; and

(7) The carrier's preauthorization and review requirements of the health benefits plan regarding the determination of medical necessity that apply to a covered person who is admitted to an in-network health care facility, and the financial responsibility of the patient for the cost of services provided by an out-of-network admitting or attending health care practitioner.

The carrier shall provide a prospective subscriber with information about the provider network, including hospital affiliations, and other information specified in this subsection, upon request.

b. Upon request of a covered person, a carrier shall promptly inform the person:

(1) whether a particular network physician is board certified; and

(2) whether a particular network physician is currently accepting new patients.

c. The carrier shall file the information required pursuant to this section with the department.

C.26:2S-6.1 Managed care plan to pay full contractual rate to out-of-network provider, certain circumstances.

2. a. With respect to a carrier which offers a managed care plan that provides for both in-network and out-of-network benefits, in the event that:

(1) a covered person is admitted by an out-of-network health care provider to an in-network health care facility for covered, medically necessary health care services, or

(2) the covered person receives covered, medically necessary health care services from an out-of-network health care provider while the covered person is a patient at an in-network health care facility and was admitted to the health care facility by an in-network provider, the carrier shall reimburse the health care facility for the services provided by the

facility at the carrier's full contracted rate without any penalty for the patient's selection of an out-of-network provider, in accordance with the in-network policies and in-network copayment, coinsurance or deductible requirements of the managed care plan.

b. The provisions of this section shall apply only if the covered person complies with the preauthorization or review requirements of the health benefits plan regarding the determination of medical necessity to access in-network inpatient benefits, as set forth in writing pursuant to section 5 of P.L.1997, c.192 (C.26:2S-5).

C.17B:26-2.1w Policy issued under Chapter 26 of Title 17B required to cover certain out-of-network services.

3. Notwithstanding the provisions of chapter 26 of Title 17B of the New Jersey Statutes to the contrary, no policy shall be delivered, issued, executed or renewed on or after the effective date of this act unless the policy meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

C.17B:27-46.1aa Policy issued under Chapter 27 of Title 17B required to cover certain out-of-network services.

4. Notwithstanding the provisions of chapter 27 of Title 17B of the New Jersey Statutes to the contrary, no policy shall be delivered, issued, executed or renewed on or after the effective date of this act unless the policy meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

C.17B:27A-19.10 Policy, contract issued under C.17B:27A-17 et seq. required to cover certain out-of-network services.

5. Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, no policy or contract shall be delivered, issued, executed or renewed on or after the effective date of this act unless the policy or contract meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all policies or contracts in which the carrier has reserved the right to change the premium.

C.17B:27A-7.8 Policy, contract issued under C.17B:27A-2 et seq. required to cover certain out-of-network services.

6. Notwithstanding the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) to the contrary, no policy or contract shall be delivered, issued, executed or renewed on or after the effective date of this act unless the policy or contract meets the requirements of P.L.2001, c.367 (C.26:2S-6.1

et al.). The provisions of this section shall apply to all policies or contracts in which the carrier has reserved the right to change the premium.

C.17:48-6aa Contracts issued under C.17:48-1 et seq. required to cover certain out-of-network services.

7. Notwithstanding the provisions of P.L.1938, c.366 (C.17:48-1 et seq.) to the contrary, no individual or group contract shall be delivered, issued, executed or renewed on or after the effective date of this act unless the contract meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7z Contract issued under C.17:48A-1 et seq. required to cover certain out-of-network services.

8. Notwithstanding the provisions of P.L.1940, c.74 (C.17:48A-1 et seq.) to the contrary, no individual or group contract shall be delivered, issued, executed or renewed on or after the effective date of this act unless the contract meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-35.25 Contract issued under C.17:48E-1 et seq. required to cover certain out-of-network services.

9. Notwithstanding the provisions of P.L.1985, c.236 (C.17:48E-1 et seq.) to the contrary, no individual or group contract shall be delivered, issued, executed or renewed on or after the effective date of this act unless the contract meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all contracts in which the health service corporation has reserved the right to change the premium.

C.26:2J-4.26 HMO required to cover certain out-of-network services.

10. Notwithstanding the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.) to the contrary, a certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued on or after the effective date of this act unless the health maintenance organization meets the requirements of P.L.2001, c.367 (C.26:2S-6.1 et al.). The provisions of this section shall apply to all enrollee agreements in which the health maintenance organization has reserved the right to change the schedule of charges.

C.52:14-17.29h State Health Benefits Commission contracts to cover certain out-of-network services.

11. The State Health Benefits Commission shall ensure that every contract purchased or renewed by the commission on or after the effective date of P.L.2001, c.367 (C.26:2S-6.1 et al.), which provides hospital or medical expense benefits through a managed care plan as defined in section 2 of P.L.1997, c.192 (C.26:2S-2), shall meet the requirements of section 2 of P.L.2001, c.367 (C.26:2S-6.1).

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

Approved January 8, 2002.

CHAPTER 368

AN ACT concerning health insurance and supplementing P.L.1992, c.161 (C.17B:27A-2 et seq.) and P.L.1992, c.162 (C.17B:27A-17 et seq.).

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

C.17B:27A-4.4 Findings, declarations relative to exclusive provider organization health benefit plans.

1. The Legislature hereby finds and declares that:
 - a. While the Legislature enacted ground-breaking health insurance reform in 1992 for the individual market that provided guaranteed-issue, guaranteed-renewal coverage, with a prohibition against rating on the basis of health status and limiting preexisting condition exclusions in policies, the plans that were established by the New Jersey Individual Health Coverage Program Board did not offer sufficient variety or options to insureds in terms of the range of coverages that are provided under the standard plans;
 - b. The original intent of the Legislature was to give policyholders a wider range of coverage options, including policies that provide reimbursement for basic and essential health care services but do not contain either the traditional mandated benefits to which the standard plans are subject or reimbursement for services which the consumer can more economically pay for himself, rather than having those services paid for through a third-party system, which adds significantly to the cost;
 - c. The New Jersey Individual Health Coverage Program Board elected to provide little variance in the coverage provided under the standard plans; rather, reductions in premium cost can be obtained

primarily through increasing the deductibles to substantial sums, which defeats the objective of making the policies affordable, in that large deductibles represent large out-of-pocket expenses;

d. In the absence of any affirmative action by the board to remedy this situation, it is the purpose of this bill to create a policy that is more affordable than the options that presently exist; even though the benefit package is not as rich as the existing plans, the benefit plan provided by this act will make health insurance more accessible to many individuals that do not have the economic resources to afford the existing plans while still providing essential coverage;

e. It is to the interest of the State and of all health care providers that as many people have access to reasonably affordable health insurance as possible, for this reduces the amount of charity care that providers provide as well as the amount of bad debt that must be absorbed by providers each year.

C.17B:27A-4.5 Carrier offering plans pursuant to C.17B:27A-2 et seq. to offer EPO; coverages.

2. a. Notwithstanding the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.), every carrier that writes individual health benefits plans pursuant to P.L.1992, c.161 shall offer a health benefits plan in the individual health insurance market that includes only the coverages enumerated in this section, as follows:

90 days hospital room and board - \$500 copayment per hospital stay;

Outpatient and ambulatory surgery- \$250 copayment per surgery;

Physicians' fees connected with hospital care, including general acute care and surgery;

Physicians' fees connected with outpatient and ambulatory surgery;

Anesthesia and the administration of anesthesia;

Coverage for newborns;

Treatment for complications of pregnancy;

Intravenous solutions, blood and blood plasma;

Oxygen and the administration of oxygen;

Radiation and x-ray therapy;

Inpatient physical therapy and hydrotherapy;

Outpatient physical therapy - 30 visits annually per covered person- \$20 copayment per treatment;

Dialysis - inpatient or outpatient;

Inpatient diagnostic tests and \$500 annual aggregate per covered person for out-of-hospital diagnostic tests;

Laboratory fees for treatment in hospital;

Delivery room fees;

Operating room fees;

Special care unit;
Treatment room fees;
Emergency room services for medically necessary treatment - \$100 copayment per visit;
Pharmaceuticals dispensed in hospital;
Dressings;
Splints;
Treatment for biologically-based mental illness, as defined in subsection a. of section 6 of P.L.1999, c.106 (C.17B:27A-7.5) - 90 days inpatient with no coinsurance - \$500 copayment per inpatient stay, 30 days outpatient with 30% coinsurance;
Alcohol and Substance Abuse Treatment - 30 days inpatient or outpatient - 30% coinsurance;
Childhood immunizations in accordance with the provisions of subsection b. of section 7 of P.L.1995, c.316 (C.26:2-137.1) and adult immunizations;
Wellness benefit - \$600 annual aggregate per covered person, \$50 annual deductible, 20% coinsurance per service; and
Physicians visits for diagnosed illness or injury - to a \$700 annual aggregate per covered person.

b. A carrier shall offer the benefits on an indemnity basis, with the option that: (1) coverage is restricted to health care providers in the carrier's network, including an exclusive provider organization, or the carrier's preferred provider organization; or (2) coverage is provided through health care providers in the carrier's network or preferred provider organization with an out-of-network option with 30% coinsurance in addition to whatever other coinsurance may be applicable under the policy.

c. With respect to all policies or contracts issued pursuant to this section, the premium rate charged by a carrier to the highest rated individual or class of individuals shall not be greater than 350% of the premium rate charged for the lowest rated individual or class of individuals purchasing this health benefits plan, provided, however, that the only factors upon which the rate differential may be based are age, gender, and geography. Rates applicable to policies or contracts issued pursuant to this section shall reflect past and prospective loss experience for benefits included in such policies or contracts, and shall be formulated in a manner that does not result in an unfair subsidization of rates applicable to policies issued pursuant to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) as the result of differences in levels of benefits offered.

d. Carriers may offer enhanced or additional benefits for an additional premium amount in the form of a rider or riders, each of which shall be comprised of a combination of enhanced or additional benefits, in a manner which will avoid adverse selection to the extent possible.

e. The provisions of P.L.1992, c. 161 (C.17B:27A-2 et seq.) shall apply to this section to the extent that they are not contrary to the provisions of this section, including but not limited to, provisions relating to preexisting conditions, guaranteed issue, and calculation of loss ratio.

f. No later than one year following enactment of this act, every carrier shall make an informational filing with the board, which shall include the policy form, the premiums to be charged for the coverage, and the anticipated loss ratio. If the board has not disapproved the form within 30 days, the form shall be deemed approved.

g. Every carrier that writes individual health benefits plans pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.) shall make available and shall make a good faith effort to market the contract or policy established pursuant to this section. A carrier who is in violation of this section shall be subject to the provisions of N.J.S.17B:30-1.

C.17B:27A-4.6 Evaluation as to effectiveness of act.

3. The New Jersey Individual Health Coverage Program Board, in consultation with the New Jersey Small Employer Health Benefits Program Board, shall evaluate the effectiveness of this act in providing affordable health care coverage and whether the health benefits plan established in this act or a similar plan should be made available to small employers.

The boards shall report to the Legislature and Governor two years after the effective date of this act on their evaluation of the health benefits plan established in this act and shall include in their report the number of policies or contracts sold, the premiums charged and the effect, if any, that the health benefits plan has had on the five standard health benefits plans offered to individuals in the State. The report shall also include the boards' recommendations with respect to expanding the number of, or making modifications to, the standard health benefits plans currently offered to small employers to include the health benefits plan established pursuant to this act or a similar plan.

C.17B:27A-4.7 Carrier offering plans pursuant to C.17B:27A-2 et seq. may offer additional plan with certain limited benefits.

4. In addition to the five health benefits plans offered by a carrier on the effective date of this act, a carrier that writes individual health benefits plans pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.) may also offer one or more of the plans through the carrier's network of providers, with

no reimbursement for any out-of-network benefits other than emergency care, urgent care, and continuity of care. A carrier's network of providers shall be subject to review and approval or disapproval by the Commissioner of Banking and Insurance, in consultation with the Commissioner of Health and Senior Services, pursuant to regulations promulgated by the Department of Banking and Insurance, including review and approval or disapproval before plans with benefits provided through a carrier's network of providers pursuant to this section may be offered by the carrier. Policies or contracts written on this basis shall be rated in a separate rating pool for the purposes of establishing a premium, but for the purpose of determining a carrier's losses, these policies or contracts shall be aggregated with the losses on the carrier's other business written pursuant to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.).

C.17B:27A-19.11 Carrier offering plans pursuant to C.17B:27A-17 et seq. may offer additional plan with certain limited benefits.

5. In addition to the five health benefits plans offered by a carrier on the effective date of this act, a carrier that writes small employer health benefits plans pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) may also offer one or more of the plans through the carrier's network of providers, with no reimbursement for any out-of-network benefits other than emergency care, urgent care, and continuity of care. A carrier's network of providers shall be subject to review and approval or disapproval by the Commissioner of Banking and Insurance, in consultation with the Commissioner of Health and Senior Services, pursuant to regulations promulgated by the Department of Banking and Insurance, including review and approval or disapproval before plans with benefits provided through a carrier's network of providers pursuant to this section may be offered by the carrier. Policies or contracts written on this basis shall be rated in a separate rating pool for the purposes of establishing a premium, but for the purpose of determining a carrier's losses, these policies or contracts shall be aggregated with the losses on the carrier's other business written pursuant to the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.).

6. This act shall take effect on the 270th day following enactment, but the New Jersey Individual Health Coverage Program Board may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act

Approved January 8, 2002.

CHAPTER 369

AN ACT concerning the State Commission of Investigation and amending P.L.1968, c.266.

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

1. Section 1 of P.L.1968, c.266 (C.52:9M-1) is amended to read as follows:

C.52:9M-1 State Commission of Investigation.

1. There is hereby created a permanent State Commission of Investigation. The commission shall consist of four members, to be known as commissioners.

Two members of the commission shall be appointed by the Governor. One each shall be appointed by the President of the Senate and by the Speaker of the General Assembly. Each member shall serve for a term of three years and until the appointment and qualification of his successor. No person shall serve, in succession, more than two three-year terms and any portion of an unexpired term as a member of the commission. The Governor shall designate one of the members to serve as chairman of the commission.

The members of the commission appointed by the President of the Senate and the Speaker of the General Assembly and at least one of the members appointed by the Governor shall be attorneys admitted to the bar of this State. No member or employee of the commission shall hold any other public office or public employment. Not more than two of the members shall belong to the same political party.

Each member of the commission shall receive an annual salary of \$35,000. Each member shall also be entitled to reimbursement for his expenses actually and necessarily incurred in the performance of his duties, including expenses of travel outside of the State.

Vacancies on the commission shall be filled for the unexpired terms in the same manner as original appointments. Vacancies on the commission shall be filled by the appropriate appointing authority within 90 days. If the appropriate appointing authority does not fill a vacancy within that time period, the vacancy shall be filled by the Chief Justice of the Supreme Court within 60 days. A vacancy on the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

Any determination made by the commission shall be by majority vote. "Majority vote" means the affirmative vote of at least three members of

the commission if there are no vacancies on the commission or the affirmative vote of at least two members of the commission if there is a vacancy.

2. Section 20 of P.L.1968, c.266 is amended to read as follows:

20. This act shall take effect immediately.

3. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 370

AN ACT concerning certain fees and salaries of county clerks, sheriffs, surrogates and other officers, amending and supplementing Title 22A of the New Jersey Statutes 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.2B:14-3 is amended to read as follows:

Salaries of surrogates.

2B:14-3. Salaries of Surrogates. The board of chosen freeholders in each county shall fix the Surrogate's annual salary by resolution in an amount equal to not less than sixty-five percent (65%) of the annual salary of a Judge of the Superior Court which shall not be diminished during the term of office or during any consecutive terms served by the Surrogate. Nothing in this section shall be construed to require that a surrogate whose annual salary exceeds the amount provided for herein shall be reduced, or that a board of chosen freeholders may not increase the salary of a surrogate in excess of the amount provided for herein.

2. N.J.S.22A:2-29 is amended to read as follows:

County clerk, deputy clerk of Superior Court fees.

22A:2-29. Upon the filing, indexing, entering or recording of the following documents or papers in the office of the county clerk or deputy clerk of the Superior Court, such parties, filing or having the same recorded or indexed in the county clerk's office or with the deputy clerk

of the Superior Court in the various counties in this State in all civil or criminal causes, shall pay the following fees in lieu of the fees heretofore provided for the filing, recording or entering of such documents or papers:

In general--

Issuing county clerk's certificate, any instrument	\$5.00
Comparing and making copies, per sheet.	\$2.00
Copies of all papers, typing and comparing of photostat, per page	\$2.00
Marking as a true copy, any instrument	\$2.00
Exemplification, any instrument	\$10.00
Plus \$1.00 per page of instrument.	

Recording or filing all instruments not herein stated	\$7.50
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Bonds, bail, recognizances--

Recording all official bonds with acknowledgment and proof of the execution thereof	\$9.00
Filing and entering recognizance or civil bail	\$9.00
Filing discharge, attachment bond	\$9.00
Filing satisfaction or order discharging recognizance or civil bail	\$9.00
Filing and recording filiation bond	\$9.00
Filing satisfaction of or order discharging filiation bond	\$9.00
Recording or discharging sheriff's bond	\$9.00

Nonbusiness corporation, recording:

Certificates of incorporation of churches, religious societies and congregations.	\$25.00
Amendments to certificates of incorporation of churches, religious societies and congregations, recording	\$25.00
Bank merger agreements, recording:	
First sheet	\$25.00
Each additional sheet	\$5.00
Certificates, each	\$5.00

Tradenames, firms, partnerships:

Certificate of name, filing (see R.S.56:1-1 et seq.)	\$50.00
Certificate of dissolution of tradename (see R.S.56:1-6 et seq.)	\$25.00
Partnership agreement (see R.S.42:1-1 et seq.)	\$50.00

Building and loan or savings and loan associations:

Change of name	\$25.00
Dissolution	\$25.00
Certificates for limited-dividend housing associations, recording:	
First page	\$20.00
Each additional page	\$5.00

Certificates for urban renewal associations, recording:	
First page	\$20.00
Each additional page	\$ 5.00
Judgments, et cetera--	
Recording judgments	\$15.00
Filing, entering and recording judgment on bond and warrant by attorney	\$37.50
Certificate for docketing Superior Court transcript	\$9.00
Recording assignment of judgment	\$15.00
Issuing transcript of judgment	\$7.50
Filing or entering on the record of discharge, cancellation, release or satisfaction of a judgment by satisfaction piece, execution returned satisfied or otherwise	\$15.00
For recording and indexing postponement of the lien of judgment	\$20.00
Execution on judgment:	
Issuing warrant on court order	\$ 9.00
Drawing execution	\$ 9.00
Recording execution	\$ 9.00
Warrant for satisfaction	\$ 6.00
Writ of attachment	\$ 9.00
Writ of possession	\$ 9.00
Writ of sequestration	\$ 9.00
Discharge of writ	\$ 9.00
Mandate	\$15.00
Liens--	
Filing, indexing and recording mechanic's lien claim	\$ 9.00
Recording, filing and noting on the record the discharge, release or satisfaction of a mechanic's lien claim	\$9.00
Extension of lien claim	\$3.00
Filing statement in mechanic's lien proceeding	\$9.00
Filing, recording and indexing mechanic's notice of intention	\$4.50
Filing a certificate discharging a mechanic's notice of intention and noting the discharge on the record thereof	\$4.50
Filing certificate from court of commencement of suit	\$4.50
Filing a court order amending a mechanic's notice of intention	\$9.00
Construction lien	\$15.00
Notice of unpaid balance, discharge	\$15.00

Notation	\$5.00
Bond	\$25.00
Filing a court order to discharge notice of intention and noting the discharge on the record thereof	\$15.00
Filing, recording and indexing stop notice	\$ 4.50
Filing a certificate discharging a stop notice and noting the discharge on the record thereof.	\$ 4.50
Filing a court order discharging a stop notice and noting the discharge on the record thereof	\$ 9.00
Filing building contract	\$25.00
Filing discharge of building contract	\$15.00
Notation	\$ 5.00
Filing building specifications	\$25.00
Filing building plans	\$25.00
Filing each notice of physician's lien	\$15.00
Entering upon the record the discharge of a physician's lien	\$15.00
Filing each hospital lien claim	\$15.00
Discharge of hospital lien	\$15.00
Filing satisfaction or order for discharge of attachment	\$15.00
Recording collateral inheritance waiver or receipt	\$15.00
Recording inheritance tax waiver	\$15.00
Subordination, release, partial release or postponement of a lien to lien of mortgage	\$20.00
Notation	\$ 5.00
Commissions and oaths--	
Administering oaths to notaries public and commissioners of deeds	\$15.00
For issuing certificate of authority of notary to take proof, acknowledgment of affidavit	\$ 5.00
For issuing each certificate of the commission and qualification of notary public for filing with other county clerks	\$15.00
For filing each certificate of the commission and qualification of notary public, in office of county clerk of county other than where such notary has qualified	\$15.00
Miscellaneous--	
Filing and recording proceedings for laying out, vacating or dedicating roads	\$25.00
Recording firemen's certificates	No charge.
Registering physician	\$25.00
Issuing alcoholic beverage identification card	\$10.00
Issuing of nonalcoholic beverage identification card to persons under twenty-one years of age	\$10.00

3. N.J.S.22A:2-30 is amended to read as follows:

Fees of surrogate and deputy clerk of the Superior Court

22A:2-30. Fees of surrogate and deputy clerk of the Superior Court.

Fees for services of the surrogate and deputy clerk of the Superior Court enumerated below shall be as follows and shall be for the use of the county in which the fees are collected:

PROBATE OF WILLS AND COPIES

Probate of a will of not more than two pages, \$100.00.

Each additional page, \$ 5.00.

The above fee is for all services in preparation and execution of complaint, filing proof of death, deposition of one witness, qualification of executor, filing power of attorney, surrogate's certificate, judgment for probate, letters testamentary, plain copy of will, binding, recording, microfilming or photostating, comparing, docketing, report to the Division of Taxation in the Department of the Treasury, report and transmission to the Clerk of the Superior Court.

Probate of will of not more than two pages without letters, \$50.00. Each additional page, \$ 5.00. This fee is for the same services as are enumerated in the preceding paragraph, except letters, surrogate's certificate and qualification of executor.

Probate of each codicil, not exceeding one page, \$25.00.

Where codicil requires an additional witness, \$5.00.

To reopen probate proceedings for qualification of executor or taking proof of extra witness, \$25.00.

One witness in the above probate proceedings, no charge.

Each additional witness, \$5.00.

Recording and comparing, microfilming or photostating, each additional page of will or codicil, \$5.00.

Filing, entering, issuing and recording, microfilming or photostating, proceedings in commission for deposition of foreign witness to a will or codicil, \$35.00. Plain extra copy of will, \$3.00 for each page.

Certified extra copy of will, \$5.00 for each page, plus \$5.00 for certificate.

Certified copy of will with proofs for New Jersey county, not exceeding two pages including will and codicil, \$50.00. For pages in excess of two, \$5.00 for each page.

Wills filed but not probated (as, where there are no assets), \$10.00 for first two pages, \$5.00 for each additional page, \$5.00 for cover letter stating no assets, \$5.00 for death certificate.

Exemplifying will for another state, not exceeding two pages including will and codicil, plus cost of certificate of Secretary of State when requisite, \$75.00 (not including \$9.00 fee for exemplified forms). For pages in excess of two, \$5.00 for each page.

Recording, microfilming or photostating, docketing, indexing, filing and reporting to the Division of Taxation in the Department of the Treasury an exemplified copy of will and probate proceedings from another state, \$5.00 for each page.

Recording, microfilming or photostating, docketing, indexing and filing a certified copy of will with proofs from New Jersey, \$5.00 for each page.

Recording, microfilming or photostating certified transcripts of wills admitted to probate and probate proceedings or letters of administration and administration proceedings granted by the Superior Court, \$5.00 for each page.

LETTERS OF TRUSTEESHIP

Acceptance of trustee and letters of trusteeship, including one certificate, \$50.00.

LETTERS OF ADMINISTRATION

General administration, including preparation and execution of complaint, bond, surety affidavits, necessary recording, microfilming or photostating, indexing, filing, report to the Division of Taxation, including power of attorney and death certificate, in the Department of the Treasury and the Clerk of the Superior Court and original letters including authorization to accept service of process and death certificate, \$125.00, and for other documents, \$5.00 per page.

Administration ad prosequendum, \$50.00, and for other documents, \$5.00 per page.

Exemplifying administration, \$75.00.

Certified copy of administration, \$50.00.

Affidavits of surviving spouse or next of kin where the value of the real and personal assets of the estate does not exceed \$20,000.00 or \$10,000.00, respectively, \$5.00 for each \$100.00 or part thereof. Total cost shall not exceed \$50.00. This fee is waived where the value of the assets of the estate does not exceed \$200.00.

LETTERS OF GUARDIANSHIP

Granting letters of guardianship, acceptance of guardianship and filing of power of attorney, \$50.00.

Affidavits of estates of minors where value of real and personal estate does not exceed \$5,000.00, \$5.00 per page.

Miscellaneous petitions and orders, \$5.00 per page.

INVENTORIES

For all services in appointment of appraisers, \$25.00.

Filing, entering and recording, microfilming or photostating, inventory and appraisal, not exceeding one page, and affidavits of appraisers and executor, \$25.00.

For each additional page, \$5.00.

ACCOUNTING

For filing complaint and one page of accounting, \$175.00.

For auditing, stating, reporting and recording, microfilming or photostating, accounts of executors, administrators, guardians, trustees and assignees, including drawing judgment, but exclusive of advertising costs:

In estates up to and including \$2,000.00, no additional fee.

In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

In estates from \$65,001.00 to and including \$200,000.00, 3/10 of 1% but not less than \$300.00.

In estates exceeding \$200,000.00--4/10 of 1%, but not less than \$400.00.

For each page of accounting in excess of one, \$5.00.

In computing the amount of an estate for the purpose of fixing the fees of a surrogate for auditing and reporting the account, the balance from the prior account shall be excluded.

For preparing notice of settlement of accounts and copies of the same, forwarding notice to newspaper, with directions as to publication, obtaining proofs of publication, keeping a record of notices and newspapers to which they are sent and of the moneys received to defray the cost of advertising and transmitting advertising charges to newspaper, \$50.00.

No fees herein allowed shall be charged against the recipient of any pension, bounty or allowance, for services of the surrogate and the

Probate Part of the Chancery Division of the Superior Court in respect thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.

MISCELLANEOUS PROCEEDINGS

Proceedings relative to presumption of death, filing, entering and recording, microfilming or photostating (exclusive of letters), with additional fee for advertising, \$175.00.

Sale of land to pay debts (exclusive of advertising), \$175.00.

Sale of land in fulfillment of contract made by decedent, \$175.00.

Sale of lands within one year, \$175.00.

Sale of minor's land, \$175.00.

Distribution, filing and entering complaint, recording, microfilming or photostating, and filing judgment, \$175.00.

Filing of first paper in action in the Superior Court, Chancery Division, Probate Part, \$175.00.

Filing of answering pleadings or other answering papers in Superior Court, Chancery Division, Probate Part (First paper filed by anyone other than Plaintiff), \$110.00.

Adoption of adults, filing and entering proceedings (all papers) including one judgment, \$175.00.

Adoption of minors, filing and entering proceedings (all papers) including one judgment, \$175.00.

Application and order to limit time to creditors, \$40.00, but exclusive of advertising costs.

Application for relief subsequent to final judgment in the Superior Court, Chancery Division, Probate Part, \$25.00.

Preparing notices to creditors to present their claims and copies of the same, sending notice to newspapers with directions as to publication, obtaining proofs of publication, keeping a record of notices and newspapers to which they are sent for publication, and of the moneys received to defray the cost of advertising and transmitting advertising charges to newspapers, \$10.00.

Advertising order of court or notice, when done by the surrogate, \$10.00, in addition to advertising fees.

Proceedings for the appointment of a conservator, with or without jury trial, \$175.00.

Proceeding for the determination of incapacity and for the appointment of a guardian for an alleged incapacitated person, with or without jury trial, \$175.00.

Proceedings in connection with payment into court of proceeds of a judgment in favor of a minor, in lieu of bond, pursuant to N.J.S. 3B:15-16

and N.J.S.3B:15-17 (in addition to fees payable under Letters of Guardianship), the following fees are payable upon withdrawal of funds on deposit:

For each withdrawal including petitions and orders provided and prepared by the surrogate for withdrawal of funds for court approval:

- Up to and including \$500.00, \$20.00.
- From \$501.00 to and including \$1,000.00, \$25.00.
- From \$1,001.00 to and including \$5,000.00, \$30.00.
- From \$5,001.00 to and including \$10,000.00, \$35.00.
- From \$10,001.00 to and including \$25,000, \$40.00.
- From \$25,001.00 to and including \$50,000.00, \$60.00.
- In excess of \$50,000.00, \$100.00.

MISCELLANEOUS CHARGES

- Short certificates, \$5.00.
- Validating short certificate within one year of issue of date, \$3.00.
- Subpoenas, each, \$25.00.
- Marking true copies, subpoenas, each, \$3.00.
- Marking true copies, orders to show cause, each, \$3.00.
- Marking true copies of other papers, each, \$3.00.
- Authorization of process, \$5.00.
- Swearing each witness, \$2.00.
- Adjournment or continuance, \$15.00.
- Miscellaneous orders of court, first page, \$5.00.
- For each additional page, \$5.00.
- Recording, microfilming or photostating all papers not herein provided for, \$5.00 for each page.
- For making copies not otherwise provided for, \$3.00 for each page.
- Filing transcript of death certificate, \$5.00.
- Power of attorney, per page \$5.00 plus \$5.00 for certified mail.
- Search fee, per estate \$10.00.
- Proceedings relative to appointment of a guardian ad litem, \$25.00.
- Renunciation by one person, filing, entering and recording, or photostating, \$5.00. Each additional person, \$3.00.
- Caveat, filing or withdrawing, \$25.00.
- Combined refunding bond and release of not more than two pages, filing, entering, microfilming and recording, or photostating, \$10.00. \$5.00 for each additional page. Additional charge for county clerk's certificate, \$5.00.

Release of not more than two pages of refunding bond and release, \$10.00. \$5.00 for each additional page. Additional charge for county clerk's certificate, \$5.00.

Assignments of legacy or interest, \$10.00 per page, plus \$5.00 where county clerk's certificate is necessary.

Filing all papers not herein provided for, \$5.00, if microfilming process is used, \$5.00 per page.

Plain copy of two-page will, \$6.00.

Each additional page, \$3.00.

Filing of motions in the Superior Court, Chancery Division, Probate Part, \$15.00.

Notice of appeal (trial court), \$10.00.

Minimum charge for all other papers or services in proceedings in the Superior Court, Chancery Division, Probate Part, \$5.00.

3B:14-48 Service of Process by Surrogate, \$25.00.

Duplicating or copying of microfiche, digital tape, high density disks, optically scanned and recorded materials or for any other media used to record or preserve records, \$150.00 per medium recorded.

Processing fee for returned check, \$20.00 plus bank fee.

4. Section 2 of P.L.1965, c.123 (C.22A:4-4.1) is amended to read as follows:

C.22A:4-4.1 Fees for services of county clerks and registers.

2. County clerks and registers of deeds and mortgages, in counties having such offices, shall charge for the services herein enumerated the following fees:

	Fee
For recording veteran's discharge papers	No fee
For recording any instrument:	
First page	\$25.00
Each additional page or part thereof	\$ 5.00
Each rider, insertion, addition, or any map, plat or sketch filed or recorded pursuant to subsection (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3)	\$ 5.00
For entering the marginal notation of an order judgment, statement or warrant discharging, annulling a notice of lis pendens and for filing such order, judgment or statement	\$ 5.00
For filing a lis pendens foreclosure	\$25.00
Notation	\$5.00
For preparing and transmitting to the assessor, collector, or other custodian of the assessment map of any taxing district, the abstract of an instrument evidencing title to realty	\$ 5.00

For entering the marginal notation of a discharge or release of a New Jersey building and loan or savings and loan mortgage and forwarding abstract	\$ 5.00
For entering the marginal notation of a discharge, assignment, postponement or release of a mortgage, other than building and loan and savings and loan mortgages	\$ 5.00
For the cancellation of any mortgage	\$15.00
For a marginal notation of the discharge of a mortgage in counties where mortgages are indexed under a system requiring a duplication of indices and description	\$ 5.00
For filing and recording notice of federal tax lien or other federal lien or certificate discharging such lien	\$20.00
For filing a notice of settlement	\$15.00
For filing each map, plat, plan or chart (except when presented by the State or its agencies or filed pursuant to subsection (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3))	\$50.00
For recording tax sale certificate, except by municipalities, or a redemption or assignment of tax sale certificate, first page .	\$25.00
Each additional page or part thereof	\$ 5.00
Certified copy of veteran's discharge	\$ 1.00
For indexing any recorded instrument in excess of 5 parties, per each name in excess of 5	\$ 1.00
For recording tax sale certificate, lien, deed, or related instrument by a municipality	\$ 3.00
For recording vacations or dedications of roads, first page	\$25.00
Each additional page or part thereof	\$ 5.00
For disclaimers	\$10.00
For reimbursement agreements	No fee

5. N.J.S.22A:4-8 is amended to read as follows:

Fees and mileage of sheriffs and other officers.

22A:4-8. For the services hereinafter enumerated sheriffs and other officers shall receive the following fees:

In addition to the mileage allowed by law, for serving every summons and complaint, attachment or any mesne process issuing out of the Superior Court, the sheriff or other officer serving such process shall, for the first defendant or party on whom such process is served, be allowed \$22.00 and, for service on the second defendant named therein, \$20.00, and for serving such process on any other defendant or defendants named therein, \$16.00 each, and no more. If a man and his wife be named in

such process they shall be considered as one defendant, except where they are living separate and apart.

Serving summons and complaint in matrimonial actions, in addition to mileage, \$22.00.

Serving capias ad respondendum, capias ad satisfaciendum, warrant of commitment, writ of ne exeat, in addition to mileage, \$48.00.

Serving order to summon juries and return, \$8.00.

Serving every execution against goods or lands and making an inventory and return, in addition to mileage, \$48.00.

For returning every writ, \$2.00.

Executing every writ of possession and return, in addition to mileage, \$48.00.

Executing every writ of attachment, sequestration or replevin issuing out of any of the courts, in addition to mileage, \$48.00.

For serving each out-of-State paper, in addition to the mileage allowed by law, \$25.00 for the first defendant on whom such paper is served, \$20.00 for service on the second defendant named therein, and \$16.00 for serving such paper on any other defendant or defendants named therein. If a man and wife be named in such paper, they shall be considered as one defendant, except where they are living separate and apart.

For serving or executing any process or papers where mileage is allowed by law, the officer shall receive mileage actually traveled to and from the courthouse, at the rate per mile of \$0.16.

The sheriff shall be entitled to retain out of all moneys collected or received by him on a forfeited recognizance, whether before or after execution, or from amercements, or from fines and costs on conviction, on indictment or otherwise, whether such moneys are payable to the State or to the county treasurer of the county wherein conviction was had, 5%.

For transporting each offender to the State Prison, per mile, but not less than \$3.00 for each offender, to be certified by the keeper of the prison and the certificate to be delivered to the county treasurer of the county where the conviction was had, \$0.23.

EXECUTION SALES

When a sale is made by virtue of an execution the sheriff shall be entitled to charge the following fees: On all sums not exceeding \$5,000.00, 6%; on all sums exceeding \$5,000.00 on such excess, 4%; the minimum fee to be charged for a sale by virtue of an execution, \$50.00.

On an execution against wages, commissions and salaries, the sheriff shall charge the same percentage fees on all sums collected as those

percentage fees applicable in cases wherein an execution sale is consummated.

When the execution is settled without actual sale and such settlement is made manifest to the officer, the officer shall receive 1/2 of the amount of percentage allowed herein in case of sale.

Making statement of execution, sales and execution fees, \$10.00.

Advertising the property for sale, provided the sheriff or deputy sheriff attend in pursuance of the advertisement, \$20.00.

Posting property for sale, \$20.00.

For the crier of the vendue, when the sheriff proceeds to sell, for every day he shall be actually employed in such sale, \$5.00.

Every adjournment of a sale, but no more than one adjournment shall be allowed, and if the sheriff shall have several executions against a defendant, he shall only be allowed for advertising, attending and adjourning, as if he had but one execution, \$28.00.

Drawing and making a deed to a purchaser of real property, \$75.00.

Drawing and making a bill of sale to the purchaser of personal property when such bill of sale is required or demanded, \$20.00.

When more than one execution shall be issued out of the Superior Court upon any judgment, each sheriff to whom such execution shall be directed and delivered shall be entitled to collect and receive from the defendant named in such execution the fees allowed by law for making a levy and return and statement thereon, or for such other services as may be actually performed by him, and the sheriff who shall collect the amount named in said execution or any part thereof, shall be entitled to the legal percentage upon whatever amount may be so collected by him, but in case any such judgment shall be settled between the parties and the amount due thereon shall not be collected by either sheriff, then the percentage on the amount collected which would be due the sheriff thereon in case only one execution had been issued shall be equally divided among the several sheriffs in whose hands an execution in the same cause may have been placed.

The sheriff shall file his taxed bill of costs with the clerk of the court out of which execution issued, within such time as the court shall direct by general rule or special order, or, in default thereof, he shall not be entitled to any costs. If any sheriff shall charge in such bill of costs for services not done, or allowed by law, or shall take any greater fee or reward for any services by him done than is or shall be allowed by law, he shall be liable for the damages sustained by the party aggrieved including a penalty of \$30.00, to be recovered in a summary manner, in the action or proceeding wherein the execution was issued or otherwise.

C.22A:4-8.1 County treasurer responsible for fees of sheriffs, use.

6. a. The county treasurer shall be responsible for all fees received by or deposited with the county sheriff pursuant to N.J.S.22A:4-8. The county sheriff shall account to the county treasurer for all these fees.

b. The county treasurer shall deposit into a trust fund dedicated to the sheriff's office \$2.00 of each fee over the amount of \$3.00 received for a service enumerated in N.J.S.22A:4-8. Such sums shall be deposited within 10 days of receipt by the county treasurer. Monies in the trust fund shall be used to upgrade and modernize the services provided by their offices. As used in this section, "to upgrade and modernize the services" shall not include the costs associated with employing personnel and shall not include offset of existing salary or new positions. The monies in the trust fund shall not be used for budgetary reduction by the counties.

c. Notwithstanding any provision of law to the contrary, monies received by a county sheriff attributable solely to the amount of fee increases for services enumerated in N.J.S.22A:4-8 pursuant to the amendments set forth in section 5 of P.L.2001, c.370, that exceed in any year the amount by which the annual minimum salary of the sheriff fixed pursuant to N.J.S.40A:9-104 exceeds the amount of the county sheriff's salary in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

7. N.J.S.22A:4-17 is amended to read as follows:

Disposition of fees of county officers.

22A:4-17. All fees, costs, allowances, percentages and other perquisites of whatever kind which surrogates, county clerks in their several capacities, registers of deeds and mortgages, and sheriffs or persons employed in their offices are entitled to charge and receive for any official acts or services they may render shall be for the sole use of the county and shall be accounted for regularly to the county treasurer; however, such monies shall be utilized to increase the salaries of surrogates, county clerks, registers of deeds and mortgages and sheriffs, except as provided in section 6 of P.L.2001, c.370 (C.22A:4-8.1), section 7 of P.L.1985, c.422 (C.22A:4-17.1) and section 4 of P.L.1988, c.109 (C.22A:4-17.2).

Such accounting shall be made on or before the fifteenth day of each month on form blanks supplied by the county treasurer. The statement of account shall clearly set forth all sums charged or taxed or which shall have accrued or become payable during the preceding month. Such statements shall be made under oath and filed in the office of the county treasurer as public records.

Such statements when received by the county treasurer shall be forthwith audited by the county auditor or other proper officer.

On or before the twentieth day of each month surrogates, county clerks, registers of deeds and mortgages, and sheriffs shall pay over the amount of such fees and moneys to the county treasurer and such officers shall be personally liable to the county for such fees and moneys.

The penalty for each day's neglect to file the required statement of account or to pay over such moneys shall be one hundred dollars (\$100.00) to be recovered in the name of the board of chosen freeholders of the county in a civil action in the Superior Court, and said officers may also be proceeded against by proceeding in lieu of prerogative writ.

8. Section 4 of P.L.1988, c.109 (C.22A:4-17.2) is amended to read as follows:

C.22A:4-17.2 Funds for service modernization, budgetary reduction

4. a. The county treasurer shall return to the county surrogate \$2.00 of each fee received for the probate of a will; for the grant of general administration; for the grant of letters of guardianship; for the grant of letters of trusteeship for the filing of inventories; for the filing of accountings; and for any other proceeding filed, recorded or issued in the surrogate's court. Such sums shall be returned within 10 days of receipt by the county treasurer.

b. Monies received by the county surrogates pursuant to the provisions of subsection a. of this section shall be used to upgrade and modernize the services provided by their offices. These monies shall not be used for budgetary reduction by the counties.

c. Notwithstanding any provision of law to the contrary, monies received by a county surrogate attributable solely to the amount of fee increases for services enumerated in N.J.S.22A:2-30 pursuant to the amendments set forth in section 3 of P.L.2001, c.370, that exceed in any year the amount by which the annual minimum salary of the surrogate fixed pursuant to N.J.S.2B:14-3 exceeds the amount of the surrogate's salary in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

9. Section 7 of P.L.1985, c.422 (C.22A:4-17.1) is amended to read as follows:

C.22A:4-17.1 Funds to upgrade services, budgetary reduction.

7. a. The county treasurer shall return to the county clerk or the register of deeds and mortgages \$2.00 of each fee received for the

recording, filing or cancelling of a document in the office of the county clerk or register of deeds and mortgages. Such sums shall be returned within 10 days of receipt of the fee by the county treasurer.

b. Monies received by the county clerks or registers of deeds and mortgages pursuant to the provisions of subsection a. shall be used to upgrade and modernize the services provided by their offices.

c. The provisions of subsection a. shall not apply to fees received from municipalities for recording, filing or cancelling documents.

d. Notwithstanding any provision of law to the contrary, monies received by a county clerk attributable solely to the amount of fee increases for services enumerated in N.J.S.22A:2-29 pursuant to the amendments set forth in section 2 of P.L.2001, c.370 and enumerated in section 2 of P.L.1965, c.123 (C.22A:4-4.1) pursuant to the amendments set forth in section 4 of P.L.2001, c.370, that exceed in any year the amount by which the annual minimum salary of the county clerk fixed pursuant to N.J.S.40A:9-76 exceeds the amount of the county clerk's salary in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

e. Notwithstanding any provision of law to the contrary, monies received by a register of deeds and mortgages attributable solely to the amount of fee increases for services enumerated in section 2 of P.L.1965, c.123 (C.22A:4-4.1) pursuant to the amendments set forth in section 4 of P.L.2001, c.370 that exceed in any year the amount by which the annual minimum salary of the register of deeds and mortgages fixed pursuant to N.J.S.40A:9-92 exceeds the amount of the salary of the register of deeds and mortgages in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

10. N.J.S.40A:9-76 is amended to read as follows:

Salary of county clerk in certain counties.

40A:9-76. The board of chosen freeholders in each county, by resolution, shall fix the annual salary of the county clerk in an amount equal to not less than sixty-five percent (65%) of the annual salary of a Judge of the Superior Court. Nothing in this section shall be construed to require that a county clerk whose annual salary exceeds the amount provided for herein shall be reduced, or that a board of chosen freeholders may not increase the salary of a county clerk in excess of the amount provided for herein.

Nothing in this section shall authorize the fixing of the salary of any person holding the office of county clerk at any amount less than that now

payable pursuant to law, so long as the said person shall hold such office during the present and any consecutively ensuing term or terms, nor shall anything in this section authorize the payment of any salary for which a range is established in an amount less than the minimum of said range.

The salary of said officer shall be paid by the proper county disbursing officer in the same manner as county officers and employees are paid.

11. N.J.S.40A:9-92 is amended to read as follows:

Salary of register of deeds and mortgages.

40A:9-92. The board of chosen freeholders in each county, by resolution, shall fix the annual salary of the register of deeds and mortgages in an amount equal to not less than sixty-five percent (65%) of the annual salary of a Judge of the Superior Court. Nothing in this section shall be construed to require that a register whose annual salary exceeds the amount provided for herein shall be reduced, or that a board of chosen freeholders may not increase the salary of a register in excess of the amount provided for herein.

Nothing in this section shall authorize the fixing of the salary of any person holding the office of register of deeds and mortgages at any amount less than that now payable pursuant to law, so long as the said person shall hold such office during the present and any consecutively ensuing term or terms, nor shall anything in this section authorize the payment of any salary for which a range is established in an amount less than the minimum of said range.

The salary of said officer shall be paid by the proper county disbursing officer in the same manner as county officers and employees are paid.

12. N.J.S.40A:9-104 is amended to read as follows:

Salary of sheriff.

40A:9-104. The board of chosen freeholders in each county, by resolution, shall fix the annual salary of the sheriff in an amount equal to not less than sixty-five percent (65%) of the annual salary of a Judge of the Superior Court. Nothing in this section shall be construed to require that a sheriff whose annual salary exceeds the amount provided for herein shall be reduced, or that a board of chosen freeholders may not increase the salary of a sheriff in excess of the amount provided for herein.

Nothing in this section shall authorize the fixing of the salary of any person holding the office of sheriff at any amount less than that now payable pursuant to law, so long as the said person shall hold such office during the present and any consecutively ensuing term or terms, nor shall

anything in this section authorize the payment of any salary for which a range is established in an amount less than the minimum of said range.

The salary of said officer shall be paid by the proper county disbursing officer in the same manner as county officers and employees are paid.

C.22A:2-51.1 Dedicated check off fee revenues for upgrading and modernizing services, capital plan.

13. With regard to all increased check off fee charges, the revenues from which are dedicated to upgrading and modernizing the services provided by the offices of constitutional officers, pursuant to the provisions of P.L.2001, c.370 (C.22A:4-8.1 et al.) or any other provision of law:

a. Each constitutional officer shall prepare and submit to the board of chosen freeholders, for its approval, a five-year capital plan setting forth the capital purposes to which the check off fee revenues are to be applied, which purposes shall include improving recording and election related records when applicable;

b. Any dispute concerning the use of the check off fee revenues shall be submitted to and resolved by the assignment judge of the county, who shall be the final arbiter of such disputes;

c. Check off fee revenues shall not be used for budgetary reduction by the county and the Director of the Division of Local Government Services in the Department of Community Affairs shall require the amendment of any county budget that is not in compliance with the requirements of this subsection;

d. Interest earned on check off fee revenues held in a dedicated or trust account shall accrue to that account and shall be used only for the purposes of check off fee revenues.

14. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 371

AN ACT providing for joint negotiations by physicians and dentists with carriers and supplementing Title 52 of the Revised Statutes.

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

C.52:17B-196 Findings, declarations relative to joint negotiations by physicians and dentists with carriers.

1. The Legislature finds and declares that:
 - a. Active, robust and fully competitive markets for health care and dental services provide the best opportunity for the residents of this State to receive high-quality health care and dental services at an appropriate cost;
 - b. A substantial amount of health care and dental services in this State is purchased for the benefit of patients by health and dental insurance carriers engaged in the financing of health care and dental services or is otherwise delivered subject to the terms of agreements between carriers and physicians and dentists;
 - c. Carriers are able to control the flow of patients to physicians and dentists through compelling financial incentives for patients in their health and dental benefits plans to utilize only the services of physicians and dentists with whom the carriers have contracted;
 - d. Carriers also control the health care and dental services rendered to patients through utilization management and other managed care tools and associated coverage and payment policies;
 - e. Carriers are often able to virtually dictate the terms of the contracts that they offer physicians and dentists and commonly offer these contracts on a take-it-or-leave-it basis;
 - f. The power of carriers to unilaterally impose provider contract terms jeopardizes the ability of physicians and dentists to deliver the superior quality health care and dental services traditionally available in this State;
 - g. Physicians and dentists do not have sufficient market power to reject unfair provider contract terms offered by carriers that impede their ability to deliver medically appropriate care without undue delay or difficulties;
 - h. Inadequate reimbursement and other unfair payment terms offered by carriers adversely affect the quality of patient care and access to care by reducing the resources that physicians and dentists can devote to patient care and decreasing the time that physicians and dentists are able to spend with their patients;
 - i. Inequitable reimbursement and other unfair payment terms also endanger the health care infrastructure and medical progress by diverting capital needed for reinvestment in the health care delivery system, curtailing the purchase of state-of-the-art technology, the pursuit of medical research, and expansion of medical services, all to the detriment of the residents of this State;

j. The inevitable collateral reduction and migration of the health care work force will also have negative consequences for the economy of this State;

k. Empowering independent physicians and dentists to jointly negotiate with carriers as provided in this act will help restore the competitive balance and improve competition in the markets for health care and dental services in this State, thereby providing benefits for consumers, physicians and dentists and less dominant carriers;

l. This act is necessary and proper, and constitutes an appropriate exercise of the authority of this State to regulate the business of insurance and the delivery of health care and dental services;

m. The pro-competitive and other benefits of the joint negotiations and related joint activity authorized by this act, including, but not limited to, restoring the competitive balance in the market for health care services, protecting access to quality patient care, promoting the health care infrastructure and medical progress, and improving communications, outweigh any potential anti-competitive effects of this act; and

n. It is the intention of the Legislature to authorize independent physicians and dentists to jointly negotiate with carriers and to qualify such joint negotiations and related joint activities for the State-action exemption to the federal antitrust laws through the articulated State policy and active supervision provided under this act.

C.52:17B-197 Definitions relative to joint negotiations by physicians and dentists with carriers.

2. As used in this act:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization which is authorized to issue health benefits plans in this State and a dental service corporation or dental plan organization authorized to issue dental plans in this State.

"Covered person" means a person on whose behalf a carrier which offers a health benefits or dental plan is obligated to pay benefits or provide services pursuant to the plan.

"Covered service" means a health care or dental service provided to a covered person under a health benefits or dental plan for which the carrier is obligated to pay benefits or provide services.

"Dental plan" means a benefits plan which pays or provides dental expense benefits for covered services and is delivered or issued for delivery in this State by or through a dental carrier.

"Dentist" means a person who is licensed to practice dentistry by the New Jersey State Board of Dentistry in accordance with the provisions of Title 45 of the Revised Statutes.

"Health benefits plan" means a plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier. For the purposes of this act, health benefits plan shall not include the following plans, policies or contracts: Medicare supplement coverage and risk contracts, accident only, specified disease or other limited benefit, credit, disability, long-term care, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), dental or vision care coverage only, or hospital expense or confinement indemnity coverage only.

"Joint negotiation representative" means a representative selected by two or more independent physicians or dentists to engage in joint negotiations with a carrier on their behalf.

"Physician" means a person who is licensed to practice medicine and surgery by the State Board of Medical Examiners in accordance with the provisions of Title 45 of the Revised Statutes.

"Utilization management" means a system for reviewing the appropriate and efficient allocation of health care or dental services under a health benefits or dental plan in accordance with specific guidelines, for the purpose of determining whether, or to what extent, a health care or dental service that has been provided or is proposed to be provided to a covered person is to be covered under the health benefits or dental plan.

C.52:17B-198 Joint negotiations regarding non-fee related matters.

3. Two or more independent physicians or dentists who are practicing in the service area of a carrier may jointly negotiate with a carrier and engage in related joint activity, as provided in this act, regarding non-fee-related matters which may affect patient care, including, but not limited to, any of the following:

- a. the definition of medical necessity and other conditions of coverage;
- b. utilization management criteria and procedures;
- c. clinical practice guidelines;
- d. preventive care and other medical management policies;
- e. patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
- f. drug formularies and standards and procedures for prescribing off-formulary drugs;
- g. quality assurance programs;
- h. respective physician or dentist and carrier liability for the treatment or lack of treatment of covered persons;
- i. the methods and timing of payments;

- j. other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;
- k. credentialing standards and procedures for the selection, retention and termination of participating physicians or dentists;
- l. mechanisms for resolving disputes between the carrier and physicians or dentists, including, but not limited to, the appeals process for utilization management and credentialing determinations;
- m. the health benefits or dental plans sold or administered by the carrier in which the physicians or dentists are required to participate;
- n. the formulation and application of reimbursement methodology;
- o. the terms and conditions of physician or dentist contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and
- p. the inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a physician's or dentist's rights to jointly petition the federal or State government, as applicable, to change the regulation.

C.52:17B-199 Joint negotiations regarding fees, fee related matters.

4. a. Upon a finding by the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, that the carrier has substantial market power in its service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons, two or more independent physicians or dentists who are practicing in the service area of a carrier may jointly negotiate with the carrier and engage in related joint activity, as provided in this act regarding fees and fee-related matters, including, but not limited to, any of the following:

- (1) the amount of payment or the methodology for determining the payment for a health care or dental service, including, but not limited to, cost of living increases;
- (2) the conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care or dental services;
- (3) the amount of any discount on the price of a health care or dental service;
- (4) the procedure code or other description of a health care or dental service covered by a payment and the appropriate grouping of the procedure codes;

(5) the amount of a bonus related to the provision of health care or dental services or a withholding from the payment due for a health care or dental service; and

(6) the amount of any other component of the reimbursement methodology for a health care or dental service.

b. The Department of Banking and Insurance, in consultation with the Department of Health and Senior Services, shall have the authority to collect and investigate such information as it reasonably believes is necessary to determine, on an annual basis:

(1) the average number of covered lives and geographical distribution of covered lives per quarter per county for every carrier in the State; and

(2) the impact of the provisions of this section on average physician or dentist fees in the State.

The Department of Banking and Insurance shall provide this information to the Attorney General on an annual basis.

C.52:17B-200 Criteria for exercise of joint negotiation rights.

5. The exercise of joint negotiation rights by two or more independent physicians or dentists who are practicing in the service area of a carrier pursuant to this act shall conform to the following criteria:

a. the physicians or dentists may communicate with each other concerning any contractual term or condition to be negotiated with the carrier;

b. the physicians or dentists may communicate with the joint negotiation representative authorized to negotiate on their behalf with the carrier concerning any contractual term or condition;

c. the joint negotiation representative shall be the sole party authorized to negotiate with the carrier on behalf of the physicians or dentists as a group;

d. the physicians or dentists may, at the option of each physician or dentist, agree to be bound by the terms and conditions negotiated by the joint negotiation representative; and

e. when communicating or negotiating with a joint negotiation representative, a carrier may offer different contractual terms or conditions to, or may contract with, individual independent physicians or dentists.

C.52:17B-201 Inapplicability of act.

6. The provisions of this act shall not apply to a health benefits or dental plan which is certified by the Commissioner of Human Services to the Attorney General as providing covered services exclusively or primarily to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under

P.L.1997, c.272 (C.30:4I-1 et seq.) or the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.).

C.52:17B-202 Requirements to act as joint negotiation representative.

7. A person or entity which proposes to act as a joint negotiation representative shall satisfy the following requirements:

a. Before entering into negotiations with a carrier on behalf of two or more independent physicians or dentists, the joint negotiation representative shall submit to the Attorney General, for his approval pursuant to section 8 of this act, on a form and in a manner prescribed by the Attorney General, a petition which identifies:

- (1) the representative's name and business address;
- (2) the names and business addresses of each physician or dentist who will be represented by the identified representative;
- (3) the ratio of the physicians or dentists requesting joint representation to the total number of physicians or dentists who are practicing within the geographic service area of the carrier;
- (4) the carrier with which the representative proposes to enter into negotiations on behalf of the identified physicians or dentists;
- (5) the intended subject matter of the proposed negotiations with the identified carrier;
- (6) the representative's plan of operation and procedures to ensure compliance with the provisions of this act;
- (7) the anticipated effect of the proposed joint negotiations on the quality and availability of health or dental care among covered persons;
- (8) the anticipated benefits of a contract between the identified physicians or dentists and carrier;
- (9) such other data, information and documents as the petitioners desire to submit in support of their petition; and
- (10) such other data, information and documents as the Attorney General deems necessary.

The joint negotiation representative, upon submitting the petition, shall pay a fee to the Attorney General in an amount, as determined by the Attorney General, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this act.

b. After the joint negotiation representative and the carrier identified pursuant to subsection a. of this section have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the joint negotiation representative shall submit to the Attorney General, for his approval in accordance with the provisions of section 8 of this act, a copy of the proposed contract between the physicians or dentists identified pursuant to subsection a. of this section and the carrier,

as well as any plan of action which the joint negotiation representative and the carrier may formally agree to for the purpose of implementing the terms and conditions of the contract.

c. Within 14 days after either party notifies the other party of its decision to decline or terminate negotiations entered into pursuant to this act, or after the date that a joint negotiation representative requests that a carrier enter into such negotiations to which request the plan fails to respond, the joint negotiation representative shall report to the Attorney General that the negotiations have ended, on a form and in a manner to be prescribed by the Attorney General. The joint negotiation representative may resume negotiations with the carrier no later than 60 days after reporting to the Attorney General that the negotiations have ended, on the basis of the petition submitted to the Attorney General pursuant to subsection a. of this section and approved by the Attorney General in accordance with the provisions of section 8 of this act. After that date, the joint negotiation representative shall be required to submit a new petition and pay an additional fee to the Attorney General pursuant to subsection a. of this section, in order to engage in negotiations with the carrier under this act.

C.52:17B-203 Powers, duties of Attorney General.

8. a. The Attorney General shall provide written approval or disapproval of a petition or a proposed contract furnished by a joint negotiation representative pursuant to section 7 of this act no later than 30 days after receipt of the petition or proposed contract, as applicable. If the Attorney General fails to provide written approval or disapproval within this time period, the joint negotiation representative may petition a court of competent jurisdiction for an order to require the Attorney General to take such action. If the Attorney General disapproves the petition or the proposed contract, he shall forward a written explanation of any deficiencies therein to the joint negotiation representative along with a statement of the specific remedial measures by which those deficiencies may be corrected.

A joint negotiation representative shall not engage in negotiations with a carrier over any contractual term or condition unless the petition furnished by the joint negotiation representative has been approved in writing by the Attorney General, nor shall a proposed contract between two or more independent physicians or dentists and a carrier be implemented unless the Attorney General has approved the contract.

b. The Attorney General shall approve a petition or a proposed contract furnished by a joint negotiation representative pursuant to section 7 of this act if the Attorney General determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the

proposed joint negotiations over a contractual term or condition or the proposed contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. In making his determination, the Attorney General shall consider physician or dentist distribution by specialty and its effect on competition in the geographic service area of the carrier.

c. The Attorney General's written approval of a petition which is furnished by a joint negotiation representative under section 7 of this act shall be effective for all subsequent negotiations between the joint negotiation representative and the identified carrier, subject to the provisions of subsection c. of section 7 of this act.

d. In the case of a petition submitted pursuant to subsection a. of section 7 of this act, the Attorney General shall notify the carrier of the petition and provide the carrier with the opportunity to submit written comments within a specified time frame that does not extend beyond the date by which the Attorney General is required to act on the petition.

C.52:17B-204 Application for hearing.

9. a. Within 30 days from the mailing by the Attorney General of a notice of disapproval of a petition submitted under section 7 of this act, the petitioners may make a written application to the Attorney General for a hearing.

b. Upon receipt of a timely written application for a hearing, the Attorney General shall schedule and conduct a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The hearing shall be held within 30 days of the application unless the petitioner seeks an extension.

c. The sole parties with respect to any petition under section 7 of this act shall be the petitioners, and notwithstanding any other provision of law to the contrary, the Attorney General shall not be required to treat any other person as a party and no other person shall be entitled to appeal the Attorney General's determination.

C.52:17B-205 Confidentiality of information.

10. All information, including documents and copies thereof, obtained by or disclosed to the Attorney General or any other person in a petition under section 7 of this act, shall be treated confidentially and shall be deemed proprietary and shall not be made public or otherwise disclosed by the Attorney General or any other person without the written consent of the petitioners to whom the information pertains.

C.52:17B-206 Good faith negotiation required.

11. A carrier and a joint negotiation representative shall negotiate in good faith regarding the terms and conditions of physician or dentist contracts pursuant to this act.

C.52:17B-207 Construction of act.

12. a. The provisions of this act shall not be construed to:

(1) permit two or more physicians or dentists to jointly engage in a coordinated cessation, reduction or limitation of the health care or dental services which they provide;

(2) permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

(3) permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law;

(4) prohibit or restrict activity by physicians or dentists that is sanctioned under federal or State law or subject such activity to the requirements of this act;

(5) affect governmental approval of, or otherwise restrict activity by, physicians or dentists that is not prohibited under federal antitrust law; or

(6) require approval of physician or dentist contract terms to the extent that the terms are exempt from State regulation under section 514(a) of the "Employee Retirement Income Security Act of 1974," Pub.L.93-406 (29 U.S.C. s.1144(a)).

b. Prior to entering into negotiations with a carrier on behalf of two or more independent physicians or dentists over a contractual term or condition, a joint negotiation representative shall notify the physicians or dentists in writing of the provisions of this act and advise them as to their potential for legal action against physicians or dentists who violate federal antitrust law.

C.52:17B-208 Report to Governor, Legislature by Attorney General.

13. The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, shall report to the Governor and the Legislature no later than four years after the effective date of this act on its implementation.

The report shall include the number of petitions submitted for approval to engage in joint negotiations and the outcome of the petitions and the

negotiations, an assessment of the effect the joint negotiations provided for in this act has had in restoring the competitive balance in the market for health care or dental services and in protecting access to quality patient care, an assessment of the impact this act has had on health insurance premiums in the State, and such other information that the Attorney General deems appropriate. The report shall also include the Attorney General's recommendations as to whether the provisions of this act shall be expanded to include other types of health care professionals and facilities.

The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, shall report to the Governor and the Legislature no later than five years after the effective date of this act with his recommendation as to whether this act shall be made permanent.

C.52:17B-209 Rules, regulations.

14. The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services and 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.

15. This act shall take effect 90 days after enactment and shall expire six years after the effective date, but the expiration of this act shall not impair any contract negotiated pursuant to this act that is in effect on the date of expiration. The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, may take such anticipatory administrative action in advance of the effective date as shall be necessary to implement the act.

Approved January 8, 2002.

CHAPTER 372

AN ACT concerning negligence or malpractice of certain licensed persons and amending P.L.1995, c.139.

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

1. Section 1 of P.L.1995, c.139 (C.2A:53A-26) is amended to read as follows:

C.2A:53A-26 "Licensed person" defined.

1. As used in this act, "licensed person" means any person who is licensed as:

- a. an accountant pursuant to P.L.1977, c.144 (C.45:2B-1 et seq.);
- b. an architect pursuant to R.S.45:3-1 et seq.;
- c. an attorney admitted to practice law in New Jersey;
- d. a dentist pursuant to R.S.45:6-1 et seq.;
- e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
- f. a physician in the practice of medicine or surgery pursuant to R.S.45:9-1 et seq.;
- g. a podiatrist pursuant to R.S.45:5-1 et seq.;
- h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-41.17 et seq.);
- i. a registered professional nurse pursuant to P.L.1947, c.262 (C.45:11-23 et seq.);
- j. a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2);
- k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-37.11 et seq.);
- l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
- m. a registered pharmacist pursuant to R.S.45:14-1 et seq.;
- n. a veterinarian pursuant to R.S. 45:16-1 et seq.; and
- o. an insurance producer pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.).

2. This act shall take effect immediately and shall apply to causes of action against physical therapists, land surveyors, veterinarians, registered pharmacists and insurance producers which occur on or after the effective date of this act.

Approved January 8, 2002.

CHAPTER 373

AN ACT concerning universal newborn hearing screening, supplementing Title 26 of the Revised Statutes, amending P.L.1995, c.316, P.L.1992, c.161, P.L.1992, c.162 and repealing P.L.1977, c.19.

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

C.26:2-103.1 Findings, declarations relative to universal newborn hearing screening.

1. The Legislature finds and declares that:

Hearing loss occurs in newborns more frequently than any other health condition for which newborn screening is currently required. Moreover, early detection of hearing loss in a child and early intervention and treatment before six months of age has been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability. Eighty percent of a child's ability to learn speech, language and related cognitive skills is established by the time the child is 36 months of age, and hearing is vitally important to the healthy development of such language skills. Due to advances in medical technology, children of all ages can receive reliable and valid screening for hearing loss in a cost-effective manner. Appropriate screening and identification of newborns and infants with hearing loss will facilitate early intervention and treatment in the critical time period for language development, and may, therefore, serve the public purposes of promoting the healthy development of children and reducing public expenditures for health care and special education and related services.

Therefore, it is necessary for the Legislature to establish a universal newborn hearing screening program that will: a. provide early detection of hearing loss in newborn children at the hospital or birthing center or as soon after birth as possible; b. enable these children and their care givers to obtain needed multi-disciplinary evaluation, treatment, and intervention services at the earliest opportunity; and c. prevent or mitigate the developmental delays and academic failures associated with late identification of hearing loss.

C.26:2-103.2 Definitions relative to universal newborn hearing screening.

2. As used in this act:

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Electrophysiologic screening measures" means the electrical result of the application of physiologic agents and includes, but is not limited to, the procedures currently known as Auditory Brainstem Response testing (ABR) and Otoacoustic Emissions testing (OAE) and any other procedure adopted by regulation by the commissioner.

"Hearing loss" means a hearing loss of 30dB or greater in the frequency region important for speech recognition and comprehension in one or both ears, which is approximately 500 through 4000 Hz., except that the commissioner may adopt a standard which establishes a less severe hearing loss, as appropriate.

"Newborn" means a child up to 28 days old.

"Parent" means a biological parent, stepparent, adoptive parent, legal guardian or other legal custodian of a child.

C.26:2-103.3 Screening for hearing loss in all newborn children.

3. a. The commissioner shall ensure that, effective January 1, 2002, all newborn children in the State shall be screened for hearing loss by an appropriate electrophysiologic screening measure.

b. Effective January 1, 2002, the department shall issue guidelines for the periodic monitoring of all infants between the age of 29 days and 36 months for delayed onset hearing loss.

c. Notwithstanding the provisions of subsection a. of this section to the contrary, no newborn child shall be screened for hearing loss if the parent of the newborn objects to such screening on the grounds that the screening conflicts with the parents' bona fide religious tenets or practices.

C.26:2-103.4 Hospital, birthing center to provide for newborn screening for hearing loss.

4. Every hospital that provides inpatient maternity services and every birthing center licensed in the State pursuant to P.L. 1971, c. 136 (C.26:2H-1 et seq.) shall be required to provide for newborn screening for hearing loss for all newborns born at the facility. The hospital or birthing center shall file a plan with the department, in a manner and on forms prescribed by the commissioner, detailing how the hospital or birthing center will implement the newborn hearing screening requirements established pursuant to this act. The plan shall include, at a minimum, the following:

- a. the electrophysiologic screening measure to be performed;
- b. the qualifications of the personnel designated to perform the electrophysiologic screening measure;
- c. guidelines for the provision of follow-up services for newborns identified as having or being at risk of developing a hearing loss;
- d. the educational services to be provided to the parents of newborns identified as having or being at risk for developing a hearing loss; and
- e. the protocol to be followed to ensure the confidentiality of any patient identifying information furnished to the department for the purposes of the central registry established pursuant to this act.

C.26:2-103.5 Physician, midwife to advise parent of availability of newborn hearing screening.

5. In the case of a newborn born outside of a hospital or birthing center who is not transferred to a hospital or birthing center, the physician or midwife, licensed in this State pursuant to Title 45 of the Revised Statutes, caring for the newborn shall advise the parent or guardian of the newborn of the availability of newborn hearing screening pursuant to this act, and

shall take such actions as may facilitate the provision of such screening to the newborn in accordance with the provisions of this act.

C.26:2-103.6 Central registry of newborns at risk of hearing loss.

6. a. The commissioner shall establish a central registry of newborns identified as having or being at risk of developing a hearing loss. The information in the central registry shall be used for the purposes of compiling statistical information and providing follow-up counseling, intervention and educational services to the parents of the newborns listed in the registry.

b. A hospital, birthing center or health care professional who performs testing required by this act shall report the results of such testing when a hearing loss is indicated to the department in a manner and on forms prescribed by the commissioner.

C.26:2-103.7 Screening, monitoring covered service.

7. The Commissioner of Human Services shall ensure that the newborn hearing screening and periodic monitoring of infants for delayed onset hearing loss required pursuant to this act is a covered service under the State Medicaid program established pursuant to P.L.1968, c. 413 (C.30:4D-1 et seq.), the "Children's Health Care Coverage Program" established pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.), and the "FamilyCare Health Coverage Program" established pursuant to P.L.2000, c.71 (C.30:4J-1 et seq.).

C.26:2-103.8 Hearing Evaluation Council.

8. The commissioner shall establish a Hearing Evaluation Council to provide on-going advice to the department on implementation of this act. The council shall be composed of not less than seven persons appointed by the commissioner who include: a board certified pediatrician, a board certified otolaryngologist, an audiologist with certified clinical competence, a person who is profoundly deaf, a person who is hearing impaired, a hearing person of parents who are deaf, and a citizen of the State who is interested in the concerns and welfare of the deaf.

Each member shall hold office for a term of two years and until each member's successor is appointed and qualified. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which the person's predecessor was appointed shall be appointed for the remainder of such term.

The council shall meet as frequently as the commissioner deems necessary, but not less than once each year. Council members shall receive no compensation but shall be reimbursed for actual expenses incurred in carrying out their duties as members of this council.

C.26:2-103.9 Rules, regulations.

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

10. Section 1 of P.L.1995, c.316 (C.17:48E-35.10) is amended to read as follows:

C.17:48E-35.10 Health service corporation contracts, child screening, blood lead, hearing loss, immunization.

1. No health service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in the following:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A health service corporation shall notify its subscribers, in writing, of any change in coverage with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits shall be provided to the same extent as for any other medical condition under the contract, except that no deductible shall be applied for benefits provided pursuant to this section. This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

11. Section 2 of P.L.1995, c.316 (C.17:48-6m) is amended to read as follows:

C.17:48-6m Hospital service corporation contracts, child screening, blood lead, hearing loss; immunizations.

2. No hospital service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in the following:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United State Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A hospital service corporation shall notify its subscribers, in writing, of any change in coverage with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits shall be provided to the same extent as for any other medical condition under the contract, except that no deductible shall be applied for benefits provided pursuant to this section. This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

12. Section 3 of P.L.1995, c.316 (C.17B:27-46.11) is amended to read as follows:

C.17B:27-46.11 Group health insurance policy, child screening, blood lead, hearing loss; immunizations.

3. No group health insurance policy providing hospital or medical expense benefits for groups with more than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the policy provides benefits to any named insured or other person covered thereunder for expenses incurred in the following:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A health insurer shall notify its policyholders, in writing, of any change in coverage with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits shall be provided to the same extent as for any other medical condition under the policy, except that no deductible shall be applied for benefits provided pursuant to this section. This section shall apply to all group health insurance policies in which the health insurer has reserved the right to change the premium.

13. Section 4 of P.L.1995, c.316 (C.26:2J-4.10) is amended to read as follows:

C.26:2J-4.10 Health maintenance organization, child screening, blood lead, hearing loss; immunizations.

4. A certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued by the Commissioner of Health and Senior Services on or after the effective date

of this act unless the health maintenance organization offers health care services to any enrollee which include:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A health maintenance organization shall notify its enrollees, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The health care services shall be provided to the same extent as for any other medical condition under the contract, except that no deductible shall be applied for services provided pursuant to this section. This section shall apply to all contracts under which the health maintenance organization has reserved the right to change the schedule of charges for enrollee coverage.

14. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to read as follows:

C.17B:27A-7 Establishment of policy, contract forms; high deductible health plan; benefit levels.

6. The board shall establish the policy and contract forms and benefit levels to be made available by all carriers for the health benefits plans required to be issued pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and shall adopt such modifications to one or more plans as the board determines are necessary to make available a "high deductible health plan" or plans consistent with section 301 of Title III of the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, regarding tax-deductible medical savings accounts, within 60 days after the enactment of P.L.1997, c.414 (C.54A:3-4 et al.). The board shall provide the commissioner with an informational filing of the policy and contract forms and benefit levels it establishes.

a. The individual health benefits plans established by the board may include cost containment measures such as, but not limited to: utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; and reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions.

b. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no more than 12 months on coverage for preexisting conditions. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall not contain a preexisting condition limitation of any period under the following circumstances:

(1) to an individual who has, under creditable coverage, with no intervening lapse in coverage of more than 31 days, been treated or diagnosed by a physician for a condition under that plan or satisfied a 12-month preexisting condition limitation; or

(2) to a federally defined eligible individual who applies for an individual health benefits plan within 63 days of termination of the prior coverage.

c. In addition to the five standard individual health benefits plans provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board may develop up to five rider packages. Premium rates for the rider packages shall be determined in accordance with section 8 of P.L.1992, c.161 (C.17B:27A-9).

d. After the board's establishment of the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier shall file the policy or contract forms with the board and certify to the board that the health benefits plans to be used by the carrier are in substantial compliance with the provisions in the corresponding board approved plans. The certification shall be signed by the chief executive officer of the carrier. Upon receipt by the board of the certification, the certified plans may be used until the board, after notice and hearing, disapproves their continued use.

e. Effective immediately for an individual health benefits plan issued on or after the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary date of an individual health benefits plan in effect on the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

(3) Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this subsection. This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

f. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

15. Section 3 of P.L.1992, c.162 (C.17B:27A-19) is amended to read as follows:

C.17B:27A-19 Five health benefit plans offered to small employers; exceptions.

3. a. Except as provided in subsection f. of this section, every small employer carrier shall, as a condition of transacting business in this State, offer to every small employer the five health benefit plans as provided in this section. The board shall establish a standard policy form for each of the five plans, which except as otherwise provided in subsection j. of this section, shall be the only plans offered to small groups on or after January 1, 1994. One policy form shall contain the benefits 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). In the case of indemnity carriers, one policy form shall be established which contains benefits and cost sharing levels which are equivalent to the health benefits plans of health maintenance organizations pursuant to the "Health Maintenance Organization Act of 1973," Pub.L.93-222 (42 U.S.C. s.300e et seq.). The remaining policy forms shall contain basic hospital and medical-surgical benefits, including, but not limited to:

- (1) Basic inpatient and outpatient hospital care;
- (2) Basic and extended medical-surgical benefits;
- (3) Diagnostic tests, including X-rays;
- (4) Maternity benefits, including prenatal and postnatal care; and
- (5) Preventive medicine, including periodic physical examinations and inoculations.

At least three of the forms shall provide for major medical benefits in varying lifetime aggregates, one of which shall provide at least \$1,000,000 in lifetime aggregate benefits. The policy forms provided pursuant to this section shall contain benefits representing progressively greater actuarial values.

Notwithstanding the provisions of this subsection to the contrary, the board also may establish additional policy forms by which a small employer carrier, other than a health maintenance organization, may provide indemnity benefits for health maintenance organization enrollees by direct contract with the enrollees' small employer through a dual arrangement with the health maintenance organization. The dual arrangement shall be filed with the commissioner for approval. The additional policy forms shall be consistent with the general requirements of P.L.1992, c.162 (C.17B:27A-17 et seq.).

b. Initially, a carrier shall offer a plan within 90 days of the approval of such plan by the commissioner. Thereafter, the plans shall be available to all small employers on a continuing basis. Every small employer which

elects to be covered under any health benefits plan who pays the premium therefor and who satisfies the participation requirements of the plan shall be issued a policy or contract by the carrier.

c. The carrier may establish a premium payment plan which provides installment payments and which may contain reasonable provisions to ensure payment security, provided that provisions to ensure payment security are uniformly applied.

d. In addition to the five standard policies described in subsection a. of this section, the board may develop up to five rider packages. Any such package which a carrier chooses to offer shall be issued to a small employer who pays the premium therefor, and shall be subject to the rating methodology set forth in section 9 of P.L.1992, c.162 (C.17B:27A-25).

e. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may approve a health benefits plan containing only medical-surgical benefits or major medical expense benefits, or a combination thereof, which is issued as a separate policy in conjunction with a contract of insurance for hospital expense benefits issued by a hospital service corporation, if the health benefits plan and hospital service corporation contract combined otherwise comply with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.). Deductibles and coinsurance limits for the contract combined may be allocated between the separate contracts at the discretion of the carrier and the hospital service corporation.

f. Notwithstanding the provisions of this section 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.s.300e et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section.

Notwithstanding the provisions of this section to the contrary, a health maintenance organization which is approved pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section, except that the plans shall provide the same level of benefits as required for a federally qualified health maintenance organization, including any requirements concerning copayments by enrollees.

g. A carrier shall not be required to own or control a health maintenance organization or otherwise affiliate with a health maintenance organization in order to comply with the provisions of this section, but the carrier shall be required to offer the five health benefits plans which are

formulated by the board and approved by the commissioner, including one plan which contains benefits and cost sharing levels that are equivalent to those required for health maintenance organizations.

h. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may modify the benefits 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).

i. (1) In addition to the rider packages provided for in subsection d. of this section, every carrier may offer, in connection with the five health benefits plans required to be offered by this section, any number of riders which may revise the coverage offered by the five plans in any way, provided, however, that any form of such rider or amendment thereof which decreases benefits or decreases the actuarial value of one of the five plans shall be filed for informational purposes with the board and for approval by the commissioner before such rider may be sold. Any rider or amendment thereof which adds benefits or increases the actuarial value of one of the five plans shall be filed with the board for informational purposes before such rider may be sold.

The commissioner shall disapprove any rider filed pursuant to this subsection that is unjust, unfair, inequitable, unreasonably discriminatory, misleading, contrary to law or the public policy of this State. The commissioner shall not approve any rider which reduces benefits below those required by sections 55, 57 and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3) and required to be sold pursuant to this section. The commissioner's determination shall be in writing and shall be appealable.

(2) The benefit riders provided for in paragraph (1) of this subsection shall be subject to the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-19, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25, and 17B:27A-27).

j. (1) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a health benefits plan issued by or through a carrier, association, or multiple employer arrangement prior to January 1, 1994 or, if the requirements of subparagraph (c) of paragraph (6) of this subsection are met, issued by or through an out-of-State trust prior to January 1, 1994, at the option of a small employer policy or contract holder, may be renewed or continued after February 28, 1994, or in the case of such a health benefits plan whose anniversary date occurred between March 1, 1994 and the effective date of P.L.1994, c.11 (C.17B:27A-19.1 et al.), may be reinstated within 60 days of that anniversary date and renewed or continued if, beginning on the first 12-month anniversary date occurring on or after the sixtieth day after the board adopts regulations concerning the implementation of the rating factors permitted by section 9 of P.L.1992, c.162

(C.17B:27A-25) and, regardless of the situs of delivery of the health benefits plan, the health benefits plan renewed, continued or reinstated pursuant to this subsection complies with the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-19, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25 and 17B:27A-27) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

Nothing in this subsection shall be construed to require an association, multiple employer arrangement or out-of-State trust to provide health benefits coverage to small employers that are not contemplated by the organizational documents, bylaws, or other regulations governing the purpose and operation of the association, multiple employer arrangement or out-of-State trust. Notwithstanding the foregoing provision to the contrary, an association, multiple employer arrangement or out-of-State trust that offers health benefits coverage to its members' employees and dependents:

(a) shall offer coverage to all eligible employees and their dependents within the membership of the association, multiple employer arrangement or out-of-State trust;

(b) shall not use actual or expected health status in determining its membership; and

(c) shall make available to its small employer members at least one of the standard benefits plans, as determined by the commissioner, in addition to any health benefits plan permitted to be renewed or continued pursuant to this subsection.

(2) Notwithstanding the provisions of this subsection to the contrary, a carrier or out-of-State trust which writes the health benefits plans required pursuant to subsection a. of this section shall be required to offer those plans to any small employer, association or multiple employer arrangement.

(3) (a) A carrier, association, multiple employer arrangement or out-of-State trust may withdraw a health benefits plan marketed to small employers that was in effect on December 31, 1993 with the approval of the commissioner. The commissioner shall approve a request to withdraw a plan, consistent with regulations adopted by the commissioner, only on the grounds that retention of the plan would cause an unreasonable financial burden to the issuing carrier, taking into account the rating provisions of section 9 of P.L.1992, c.162 (C.17B:27A-25) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

(b) A carrier which has renewed, continued or reinstated a health benefits plan pursuant to this subsection that has not been newly issued to a new small employer group since January 1, 1994, may, upon approval of the commissioner, continue to establish its rates for that plan based on the loss experience of that plan if the carrier does not issue that health benefits plan to any new small employer groups.

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

(5) A health benefits plan that otherwise conforms to the requirements of this subsection shall be deemed to be in compliance with this subsection, notwithstanding any change in the plan's deductible or copayment.

(6) (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, a health benefits plan renewed, continued or reinstated pursuant to this subsection shall be filed with the commissioner for informational purposes within 30 days after its renewal date. No later than 60 days after the board adopts regulations concerning the implementation of the rating factors permitted by section 9 of P.L.1992, c.162 (C.17B:27A-25) the filing shall be amended to show any modifications in the plan that are necessary to comply with the provisions of this subsection. The commissioner shall monitor compliance of any such plan with the requirements of this subsection, except that the board shall enforce the loss ratio requirements.

(b) A health benefits plan filed with the commissioner pursuant to subparagraph (a) of this paragraph may be amended as to its benefit structure if the amendment does not reduce the actuarial value and benefits coverage of the health benefits plan below that of the lowest standard health benefits plan established by the board pursuant to subsection a. of this section. The amendment shall be filed with the commissioner for approval pursuant to the terms of sections 4, 8, 12 and 25 of P.L.1995, c.73 (C.17:48-8.2, 17:48A-9.2, 17:48E-13.2 and 26:2J-43), N.J.S.17B:26-1 and N.J.S.17B:27-49, as applicable, and shall comply with the provisions of sections 2 and 9 of P.L.1992, c.162 (C.17B:27A-18 and 17B:27A-25) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

(c) A health benefits plan issued by a carrier through an out-of-State trust shall be permitted to be renewed or continued pursuant to paragraph (1) of this subsection upon approval by the commissioner and only if the benefits offered under the plan are at least equal to the actuarial value and benefits coverage of the lowest standard health benefits plan established by the board pursuant to subsection a. of this section. For the purposes of meeting the requirements of this subparagraph, carriers shall be required to file with the commissioner the health benefits plans issued through an out-of-State trust no later than 180 days after the date of enactment of P.L.1995, c.340. A health benefits plan issued by a carrier through an out-of-State trust that is not filed with the commissioner pursuant to this subparagraph, shall not be permitted to be continued or renewed after the 180-day period.

(7) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, an association, multiple employer arrangement or out-of-State trust may offer a health benefits plan authorized to be renewed, continued or reinstated pursuant to this subsection to small employer groups

that are otherwise eligible pursuant to paragraph (1) of subsection j. of this section during the period for which such health benefits plan is otherwise authorized to be renewed, continued or reinstated.

(8) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a carrier, association, multiple employer arrangement or out-of-State trust may offer coverage under a health benefits plan authorized to be renewed, continued or reinstated pursuant to this subsection to new employees of small employer groups covered by the health benefits plan in accordance with the provisions of paragraph (1) of this subsection.

(9) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) or P.L.1992, c.161 (C.17B:27A-2 et seq.) to the contrary, any individual, who is eligible for small employer coverage under a policy issued, renewed, continued or reinstated pursuant to this subsection, but who would be subject to a preexisting condition exclusion under the small employer health benefits plan, or who is a member of a small employer group who has been denied coverage under the small employer group health benefits plan for health reasons, may elect to purchase or continue coverage under an individual health benefits plan until such time as the group health benefits plan covering the small employer group of which the individual is a member complies with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.).

(10) In a case in which an association made available a health benefits plan on or before March 1, 1994 and subsequently changed the issuing carrier between March 1, 1994 and the effective date of P.L.1995, c.340, the new issuing carrier shall be deemed to have been eligible to continue and renew the plan pursuant to paragraph (1) of this subsection.

(11) In a case in which an association, multiple employer arrangement or out-of-State trust made available a health benefits plan on or before March 1, 1994 and subsequently changes the issuing carrier for that plan after the effective date of P.L.1995, c.340, the new issuing carrier shall file the health benefits plan with the commissioner for approval in order to be deemed eligible to continue and renew that plan pursuant to paragraph (1) of this subsection.

(12) In a case in which a small employer purchased a health benefits plan directly from a carrier on or before March 1, 1994 and subsequently changes the issuing carrier for that plan after the effective date of P.L.1995, c.340, the new issuing carrier shall file the health benefits plan with the commissioner for approval in order to be deemed eligible to continue and renew that plan pursuant to paragraph (1) of this subsection.

Notwithstanding the provisions of subparagraph (b) of paragraph (6) of this subsection to the contrary, a small employer who changes its health benefits plan's issuing carrier pursuant to the provisions of this paragraph,

shall not, upon changing carriers, modify the benefit structure of that health benefits plan within six months of the date the issuing carrier was changed.

k. Effective immediately for a health benefits plan issued on or after the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.), the health benefits plans required pursuant to this section, including any plans offered by a State approved or federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunization as recommended by the Advisory Committee on Immunization Practices of the United State Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

(3) Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to 2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this subsection. This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

l. The board shall consider including benefits for speech-language pathology and audiology services, as rendered by speech-language pathologists and audiologists within the scope of their practices, in at least one of the five standard policies and in at least one of the five riders to be developed under this section.

m. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits

plans required pursuant to this section that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

Repealer.

16. P.L.1977, c.19 (C.26:2-101 et seq.) is repealed.

17. This act shall take effect on January 1, 2002 but the commissioner may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act. The universal newborn hearing screening requirements of sections 10 through 15 of this act shall apply to all policies, contracts and health benefits plans issued or renewed on or after the effective date of this act.

Approved January 8, 2002.

CHAPTER 374

AN ACT concerning certain water supply districts in the State of New Jersey, and amending R.S.58:5-3.

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

1. R.S.58:5-3 is amended to read as follows:

Appointment of commissioners; terms; vacancies.

58:5-3. The Governor shall, by and with the advice and consent of the Senate, appoint a commission consisting of seven members who shall be residents of the water supply district which they represent and not more than four of whom shall be of the same political party. The commissioners

first appointed shall hold office, one for one year, one for two years, one for three years and two for four years. The two commissioners first appointed pursuant to P.L.2001, c.374 shall hold office for four years. Upon the expiration of the term of office of any commissioner, his successor shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of four years. Each commissioner shall hold his office until his successor has been appointed, and any vacancy in the membership of the commission shall be filled for the unexpired term in the manner provided for an original appointment. If the Senate is not in session at the time of making any such appointment, the Governor may make an ad interim appointment for a time extending only until such time as the Senate shall convene.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 375

AN ACT concerning the placement of automated external defibrillators in State buildings and supplementing P.L.1999, c.34 (C.2A:62A-23 et seq.).

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

C.2A:62A-28 Definitions relative to placement of automated external defibrillators in State buildings.

1. As used in this act:

"Automated external defibrillator" means an automated external defibrillator as defined in section 2 of P.L.1999, c.34 (C.2A:62A-24).

"Commissioner" means the Commissioner of Health and Senior Services.

"State building" means a building or portion of a building that is owned, leased or operated by a State agency.

C.2A:62A-29 Guidelines with respect to placement of automated external defibrillators in State buildings.

2. a. The Commissioner of Health and Senior Services shall establish guidelines, which the commissioner shall recommend for adoption by all State agencies, with respect to the placement of automated external defibrillators in State buildings. The guidelines shall take into account the need to ensure compliance with the provisions of P.L.1999, c.34

(C.2A:62A-23 et seq.), for the purposes of ensuring immunity from civil liability pursuant thereto, regarding the training of users of automated external defibrillators, the maintenance and testing of these devices, coordination with emergency medical services providers, and the adoption of protocols to effectuate this compliance.

b. The commissioner shall issue the guidelines established pursuant to subsection a. of this section to all State agencies no later than the 180th day after the effective date of this act.

c. For the purpose of establishing guidelines pursuant to subsection a. of this section, the commissioner shall consult, at a minimum, with: the New Jersey First Aid Council, Inc.; the American Heart Association; the American Red Cross; the Medical Society of New Jersey; the State Treasurer; the Commissioner of Personnel; the Attorney General; and representatives of organized labor.

3. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 376

AN ACT establishing the Office on Women's Health in the Department of Health and Senior Services.

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

C.26:1A-123 Findings, declarations relative to women's health.

1. The Legislature finds and declares that: women tend to live seven years longer than men and are at greater risk of having chronic diseases; approximately 75% of residents in New Jersey's long-term care facilities are women; approximately 19%, or 500,000 women 19 through 64 years of age in the State have no health insurance; women of color experience a shorter life expectancy, higher maternal and infant mortality, and more chronic disease; and it is important to promote the prevention and early detection of diseases in women and the equality of care, treatment and rehabilitation for women when they become ill.

The Legislature further recognizes that: heart disease is the leading cause of death for women, however, women with heart disease are not diagnosed or treated as early or as aggressively as men, and the classic risk profile for cardiovascular disease is based on a male model of disease; breast cancer is the leading cause of death in women between the ages of 35-50; New Jersey has higher than average rates for breast cancer and the

State ranks 25th among all states for breast cancer screening; there remains a tremendous need for education and information regarding breast cancer symptoms, self-evaluation, routine mammography, prevention programs and access to services; nearly one fourth of pregnant women do not receive adequate prenatal care; women constitute the fastest growing group of people with AIDS in New Jersey; and domestic violence is a major health problem for women nationally and in this State.

Therefore, it is necessary to create a special office to focus exclusively on these crucial health concerns facing the women in New Jersey.

C.26:1A-124 Office on Women's Health.

2. There is established the Office on Women's Health in the Department of Health and Senior Services.

The office shall:

a. Provide grants to community-based organizations to conduct special research, demonstration and evaluation projects on women's health concerns;

b. Develop and implement model public and private partnerships throughout the State for health awareness campaigns and to improve the access, acceptability and use of public health services;

c. Serve as an information and resource center for women's health information and data;

d. Function as an advocate for the adoption and implementation of effective measures to improve women's health;

e. Convene such task forces of experienced, knowledgeable persons on specific women's health issues as the director deems appropriate; and

f. Review the programs of the Departments of Health and Senior Services, Human Services, Community Affairs and Education and any other department of State government, as appropriate, that concern women's health and make recommendations to the departments that will enable them to better coordinate and improve the effectiveness of their efforts.

C.26:1A-125 Appointment of director.

3. The Commissioner of Health and Senior Services shall appoint a director for the office who shall serve at the pleasure of the commissioner during the commissioner's term of office and until the appointment and qualification of the director's successor. The director shall devote his entire time to the duties of the position and shall receive a salary as provided by law.

C.26:1A-126 Duties of the office.

4. The office shall:

- a. Apply for and accept any grant of money from the federal government, private foundations or other sources, which may be available for programs related to women's health;
- b. Serve as the designated State agency for receipt of federal funds specifically designated for women's health programs; and
- c. Enter into contracts with individuals, organizations, and institutions necessary for the performance of its duties under this act.

C.26:1A-127 Women's Health Advisory Commission.

5. There is established a Women's Health Advisory Commission.

The commission shall consist of nine members, including the Commissioner of Health and Senior Services or his designee, who shall serve ex officio, and eight public members who are residents of the State and who shall be appointed as follows: one member who is a health care professional shall be appointed by the President of the Senate; one member who is a health care professional shall be appointed by the Speaker of the General Assembly; and six members, at least two of whom are health care professionals, at least one of whom represents health care facilities, at least one of whom represents the health insurance industry, and at least one of whom is a woman with a disability, shall be appointed by the Governor with the advice and consent of the Senate. No less than five of the public members shall be women.

The term of office of each public member shall be three years, but of the members first appointed, two shall be appointed for a term of one year, three shall be appointed for a term of two years and three shall be appointed for a term of three years. A member shall hold office for the term of his appointment and until his successor has been appointed and qualified. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member of the commission is eligible for reappointment.

The public members of the commission shall not receive any compensation for their services, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the commission, within the limits of funds available to the commission.

The members of the commission shall annually elect a chairman and a vice-chairman from among the public members and may select a secretary, who need not be a member of the commission.

The Office on Women's Health in the Department of Health and Senior Services shall provide staff and assistance which the commission requires to carry out its work.

C.26:1A-128 Duties of commission.

6. The commission shall:

- a. Review and make recommendations to the Office on Women's Health on any rules, regulations and policies proposed by the office;
- b. Advise the office on the awarding of grants and development of programs and services required pursuant to this act;
- c. Advise the office on the needs, priorities, programs and policies relating to women's health in this State; and
- d. Provide any other assistance to the office, as may be requested by the director.

The commission may accept from any governmental department or agency, public or private body or any other source grants or contributions to be used in carrying out its responsibilities under this act.

C.26:1A-129 Annual report to Legislature, Governor.

7. The Office on Women's Health shall report annually, by September 1 of each year, to the Legislature and the Governor on the activities of the office, including the grants made to community-based organizations, any public or private partnerships that the office has developed or implemented, and any task forces on specific women's health issues that the office has convened. The office may include in the report any recommendations for administrative or legislative action that it deems appropriate.

C.26:1A-130 Assistance, services available to the office.

8. The Office on Women's Health is entitled to call to its assistance, and avail itself of, the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. All departments, agencies and divisions are authorized and directed, to the extent not inconsistent with law, to cooperate with the Office on Women's Health.

C.26:1A-131 Rules, regulations.

9. The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

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

Approved January 8, 2002.

CHAPTER 377

AN ACT concerning certain testing of evidence and supplementing Title 2A and Title 53 of the New Jersey Statutes.

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

C.2A:84A-32a Motion for performance of forensic DNA testing, certain circumstances.

1. a. Any person who was convicted of a crime and is currently serving a term of imprisonment may make a motion before the trial court that entered the judgment of conviction for the performance of forensic DNA testing.

(1) The motion shall be verified by the convicted person under penalty of perjury and shall do all of the following:

(a) explain why the identity of the defendant was a significant issue in the case;

(b) explain in light of all the evidence, how if the results of the requested DNA testing are favorable to the defendant, a motion for a new trial based upon newly discovered evidence would be granted;

(c) explain whether DNA testing was done at any prior time, whether the defendant objected to providing a biological sample for DNA testing, and whether the defendant objected to the admissibility of DNA testing evidence at trial. If evidence was subjected to DNA or other forensic testing previously by either the prosecution or the defense, the court shall order the prosecution or defense to provide all parties and the court with access to the laboratory reports, underlying data and laboratory notes prepared in connection with the DNA testing;

(d) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought; and

(e) include consent to provide a biological sample for DNA testing.

(2) Notice of the motion shall be served on the Attorney General, the prosecutor in the county of conviction, and if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within 60 days of the date on which the Attorney General and the prosecutor are served with the motion, unless a continuance is granted. The Attorney General or prosecutor may support the motion for DNA testing or oppose it with a statement of reasons and may recommend to the court that if any DNA testing is ordered, a particular type of testing be conducted.

b. The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

c. The court shall appoint counsel for the convicted person who brings a motion pursuant to this section if that person is indigent.

d. The court shall not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following have been established:

(1) the evidence to be tested is available and in a condition that would permit the DNA testing that is requested in the motion;

(2) the evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect;

(3) the identity of the defendant was a significant issue in the case;

(4) the convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the offender;

(5) the requested DNA testing result would raise a reasonable probability that if the results were favorable to the defendant, a motion for a new trial based upon newly discovered evidence would be granted. The court in its discretion may consider any evidence whether or not it was introduced at trial;

(6) the evidence sought to be tested meets either of the following conditions:

(a) it was not tested previously;

(b) it was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the offender or have a reasonable probability of contradicting prior test results;

(7) the testing requested employs a method generally accepted within the relevant scientific community; and

(8) the motion is not made solely for the purpose of delay.

e. If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used.

(1) If the parties agree upon a mutually acceptable laboratory that is accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board or a laboratory that has a certificate of compliance with national standards issued pursuant to 42 U.S.C.A. s.14131 from the National Forensic Science Technology Center, the testing shall be conducted by that laboratory.

(2) If the parties fail to agree, the testing shall be conducted by the New Jersey State Police Forensic Science Laboratory. For good cause shown, however, the court may direct the evidence to an alternative laboratory that is accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board or a laboratory that has a certificate of compliance with national standards issued pursuant to 42 U.S.C.A. s.14131 from the National Forensic Science Technology Center.

f. The result of any testing ordered pursuant to this section shall be fully disclosed to the person filing the motion, the prosecutor and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.

g. The costs of the DNA testing ordered pursuant to this section shall be borne by the convicted person.

h. An order granting or denying a motion for DNA testing pursuant to this section may be appealed, pursuant to the Rules of Court.

i. DNA testing ordered by the court pursuant to this section shall be done as soon as practicable.

j. DNA profile information from biological samples taken from a convicted person pursuant to a motion for post-conviction DNA testing in accordance with the provisions of this section shall be treated as confidential and shall not be deemed a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning access to public records; except as provided in section 2 of P.L.2001, c.377 (C.53:1-20.37).

k. As used in this act, the terms "DNA," "DNA sample," "DNA databank," "CODIS" and "FBI" shall have the meaning set forth in section 3 of P.L.1994, c.136 (C.53:1-20.19).

C.53:1-20.37 Retaining of all DNA profile information.

2. a. Notwithstanding any other provision of law to the contrary, the Division of State Police in the Department of Law and Public Safety shall retain all DNA profile information from biological samples taken from a convicted person pursuant to the provisions of section 1 of P.L.2001, c.377 (C.2A:84A-32a) and may use the profile information in the investigation and prosecution of other crimes. The DNA profile information shall be added to, stored and maintained in the State DNA databank established pursuant to the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) and shall be forwarded to the FBI for inclusion in CODIS.

b. The Attorney General shall adopt rules governing the procedures to be used in the analysis and storage of DNA profile information obtained in accordance with the provisions of P.L.2001, c.377 (C.2A:84A-32a et al.).

C.2A:84A-32b Rules.

3. The Supreme Court of New Jersey may adopt rules appropriate and necessary to effectuate the purpose of this act.

4. This act shall take effect on the 180th day after enactment, but the Attorney General may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act

Approved January 8, 2002.

CHAPTER 378

AN ACT concerning certified landscape architects and amending P.L.1989, c.275 and P.L.1989, c.277.

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

1. Section 1 of P.L.1989, c.275 (C.45:3-1.1) is amended to read as follows:

C.45:3-1.1 Definitions.

1. For the purposes of this act:
 - a. "Aesthetic principles" means the concepts of order, balance, proportion, scale, rhythm, color, texture, mass and form as used in the design process.
 - b. "Architect" means an individual who through education, training, and experience is skilled in the art and science of building design and has been licensed by the New Jersey State Board of Architects to practice architecture in the State of New Jersey.
 - c. "Architecture" means the art and science of building design and particularly the design of any structure for human use or habitation. Architecture, further, is the art of applying human values and aesthetic principles to the science and technology of building methods, materials and engineering systems, required to comprise a total building project with a coherent and comprehensive unity of structure and site.
 - d. "Board" means the New Jersey State Board of Architects.
 - e. "Certificate of authorization" means a certificate issued by the board pursuant to this amendatory and supplementary act.
 - f. "Closely allied professional" means and is limited to licensed architects, professional engineers, land surveyors, professional planners, and certified landscape architects, and persons that provide space planning services, interior design services, or the substantial equivalent thereof.
 - g. "Engineering systems" means those systems necessary for the proper function of a building and the surrounding site, the proper design of which requires engineering knowledge acquired through engineering or architectural education, training, or experience. These systems include but are not limited to structural, electrical, heating, lighting, acoustical, ventilation, air conditioning, grading, plumbing, and drainage. Drainage facilities for sites of ten acres or more or involving storm water detention facilities or traversed by a water course shall only be designed by a professional engineer.

h. "Joint committee" means the Joint Committee of Architects and Engineers established pursuant to the "Building Design Services Act," P.L.1989, c.277 (C.45:4B-1 et seq.).

i. "Human use or habitation" means the activities of living, including, but not limited to fulfilling domestic, religious, educational, recreational, employment, assembly, health care, institutional, memorial, financial, commercial, industrial and governmental needs.

j. "Human values" means the social, cultural, historical, economic and environmental influences that have an impact on the quality of life.

k. "Practice of architecture" or "architectural services" means the rendering of services in connection with the design, construction, enlargement, or alteration of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and administration of construction for the purpose of determining compliance with drawings and specifications.

l. "Responsible charge" means the rendering of regular and effective supervision by a competent licensed architect to those individuals performing services which directly and materially affect the quality and competence of architectural services rendered by the licensee. A licensee engaged in any of the following acts or practices shall be deemed not to have rendered regular and effective supervision:

(1) The regular and continuous absence from principal office premises from which professional services are rendered, except for performance of field work or presence in a field office maintained exclusively for a specific project;

(2) The failure to personally inspect or review the work of subordinates where necessary and appropriate;

(3) The rendering of a limited, cursory or perfunctory review of plans for a building or structure in lieu of an appropriate detailed review;

(4) The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

m. "Interior design services" means rendering or offering to render services, for a fee or other valuable consideration, in the preparation and administration of interior design documents, including, but not limited to, drawings, schedules and specifications which pertain to the design intent and planning of interior spaces, including furnishings, layouts, non-load bearing partitions, fixtures, cabinetry, lighting location and type, outlet location and type, switch location and type, finishes, materials and interior construction not materially related to or materially affecting the building

systems, in accordance with applicable laws, codes, regulations and standards.

2. Section 3 of P.L.1989, c.277 (C.45:4B-3) is amended to read as follows:

C.45:4B-3 Definitions.

3. For the purposes of this act:

a. "Architectural project" means any building or structure the plans for which may be prepared, designed, signed, and sealed by a licensed architect pursuant to section 7 of this act.

b. "Boards" means the New Jersey State Board of Architects and the State Board of Professional Engineers and Land Surveyors.

c. "Closely allied professional" means and is limited to licensed architects, professional engineers, land surveyors, professional planners, and certified landscape architects.

d. "Engineering project" means a building or structure the plans for which may be prepared, designed, signed, and sealed by a professional engineer pursuant to section 7 of this act.

e. "Engineering systems" means those systems necessary for the proper function of a building and surrounding site, the proper design of which requires engineering knowledge acquired through engineering or architectural training and experience. These systems include but are not limited to structural, electrical, heating, lighting, acoustical, ventilation, air conditioning, grading, plumbing and drainage. Drainage facilities for sites of 10 acres or more or involving storm water detention facilities or traversed by a water course shall only be designed by a professional engineer.

f. "Joint committee" means the Joint Committee of Architects and Engineers created pursuant to section 4 of this act.

g. "Owner" means any person, agent, firm, partnership or corporation having a legal or equitable interest in the property or any agent acting on behalf of such individuals or entities.

h. "Practice of architecture" or "architectural services" means the rendering of services in connection with the design, construction, enlargement, or alteration of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and administration of construction for the purpose of determining compliance with drawings and specifications.

i. "Practice of engineering" or "engineering services" means any service or creative work the adequate performance of which requires

engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and water, engineering studies, and the administration of construction for the purpose of determining compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any engineering project including: utilities, structures, buildings, machines, equipment, processes, work systems, projects, telecommunications, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. The design of buildings by professional engineers shall be consistent with section 7 of this act. The practice of professional engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

j. "Responsible charge" means the rendering of regular and effective supervision by a competent licensed architect or professional engineer as appropriate to those individuals performing services which directly and materially affect the quality and competence of professional work rendered by the licensee. A licensee engaged in any of the following acts or practices shall be deemed not to have rendered regular and effective supervision:

(1) The regular and continuous absence from principal office premises from which professional services are rendered, except for the performance of field work or presence in a field office maintained exclusively for a specific project;

(2) The failure to personally inspect or review the work of subordinates where necessary and appropriate;

(3) The rendering of a limited, cursory or perfunctory review of plans for a building or structure in lieu of an appropriate detailed review; and

(4) The failure to personally be available on a reasonable basis or with adequate advanced notice for consultation and inspection where circumstances require availability.

3. Section 4 of P.L.1989, c.277 (C.45:4B-4) is amended to read as follows:

C.45:4B-4 Joint Committee of Architects and Engineers.

4. There is created in the Division of Consumer Affairs in the Department of Law and Public Safety a Joint Committee of Architects and Engineers which shall consist of five members, two of whom shall be

licensed architect members of the New Jersey State Board of Architects, two of whom shall be professional engineer members of the State Board of Professional Engineers and Land Surveyors and one of whom shall be appointed by the Governor.

The professional members shall be appointed by their respective board presidents with the advice and consent of a majority of their respective boards. They shall serve at the discretion of their respective boards during their terms of office.

The gubernatorial appointment shall be a resident of this State with experience as an arbitrator and shall not be a licensed architect, professional engineer, or a closely allied professional. The gubernatorial appointment shall serve from the date of appointment for a term of five years and shall not serve for more than two consecutive terms. The gubernatorial appointment may be removed for cause by the Governor.

An alternate member shall be chosen from each board in the same manner as the professional members. An alternate member may represent the appointing board when a professional member is absent from a joint committee meeting. While acting in this capacity the alternate member shall enjoy all the rights and privileges of a voting professional member.

The gubernatorial appointment with an equal number of architect and engineer professional members present shall constitute a quorum. No joint committee business shall be conducted without a quorum.

The joint committee shall meet at least six times a year, except that it shall meet no less than once every two months.

The joint committee members shall be entitled to receive per diem fees and expenses equivalent to fees paid to members of the professional and occupational licensing boards pursuant to section 2 of P.L.1977, c.285 (C.45:1-2.5).

The cost of operation of the joint committee shall be borne equally by the boards which shall adopt such fees by regulation as are necessary to fund such operation.

4. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 379

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

74 DEPARTMENT OF STATE
30 Educational, Cultural and Intellectual Development
36 Higher Educational Services
2410 Rutgers, The State University
GRANTS-IN-AID

82-2410 Institutional Support	\$1,300,000
Total Appropriation, Rutgers, The State University	\$1,300,000
Special Purpose:	
82 College of Nursing	(\$1,300,000)

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 380

AN ACT concerning complaints against State Police officers and supplementing Title 53 of the Revised Statutes.

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

C.53:1-33 Complaints against State Police officers, process.

1. Except as otherwise provided by law, no permanent officer or trooper of the New Jersey State Police shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the State Police, nor shall an officer or trooper be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against the officer or trooper.

The complaint shall be filed in the office of the Superintendent or with the officer or officers having charge of the unit of the State Police wherein the complaint is made and a copy shall be served upon the officer or trooper so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 or more than 30 days from date of service of the complaint.

A complaint charging a violation of the internal rules and regulations established for the conduct of the State Police shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based, except that a complaint charging a violation of the internal rules and regulations established for the conduct of the State Police involving (1) prohibited discrimination, (2) unreasonable use of force or threat of force, or (3) an intentional constitutional violation shall be filed no later than the 120th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based, until such time as the consent decree entered into between the United States and this State in Civil No. 99-5970 (MLC), ordered by United States District Court Judge Mary Cooper on December 30, 1999, has expired on such matter and all discipline issues will be governed by the 45-day limit thereafter. The applicable time limit shall not apply if an investigation of an officer or trooper for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that person for a violation of the criminal laws of this State. The applicable time limit shall begin on the day after the disposition of the criminal investigation. The time requirement of this section for the filing of a complaint against an officer or trooper shall not apply to a filing of a complaint by a private individual.

A failure to comply with the provisions of this section concerning the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

The officer or trooper may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

2. This act shall take effect immediately as to any complaint pending at the time of enactment of this act which charges a member of the State Police with a violation of the internal rules and regulations established for the conduct of the State Police involving prohibited discrimination, unreasonable use of force or threat of force, or an intentional constitutional violation which complaint, if unresolved, will result in the delay of a listed promotional opportunity for that member, and shall take effect on the 75th

day after enactment as to any complaint pending at the time of enactment of this act which charges a member of the State Police with a violation of the internal rules and regulations established for the conduct of the State Police which does not involve prohibited discrimination, unreasonable use of force or threat of force, or an intentional constitutional violation which complaint, if unresolved, will result in the delay of a listed promotional opportunity for that member, and shall take effect on the 120th day after enactment as to all other complaints against a member of the State Police

Approved January 8, 2002.

CHAPTER 381

AN ACT concerning certain grand jury charges and supplementing Title 2B of the New Jersey Statutes.

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

C.2B:22-9 Grand jury instruction in elements of justification for use of force by law enforcement officer.

1. a. In a grand jury proceeding where the use of force by a law enforcement officer has been introduced as an issue, the prosecutor shall instruct the grand jury in the elements of justification for the use of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-9.

b. The prosecutor shall specifically charge the grand jury as follows:

(1) Subject to the limitations set out below, the use of force upon or toward the person of another is justifiable when a law enforcement officer is making an arrest or assisting in making an arrest and the officer reasonably believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable unless:

(a) The officer makes known the purpose of the arrest or reasonably believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the officer to be valid.

(3) The use of deadly force is not justifiable unless:

(a) The officer effecting the arrest is authorized to act as a law enforcement officer; and

(b) The officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(c) The officer reasonably believes that the crime for which the arrest is made was homicide, kidnapping, an offense under N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a dwelling, or an attempt to commit one of these crimes; and

(d) the officer reasonably believes:

(i) There is an imminent threat of deadly force to himself or to a third party; or

(ii) The use of deadly force is necessary to thwart the commission of a crime as set forth in subparagraph (c) of this paragraph; or

(iii) The use of deadly force is necessary to prevent an escape.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody under the provisions of this act. A correction officer or other person authorized to act as a law enforcement officer is, however, justified in using any force including deadly force, which he reasonably believes to be immediately necessary to prevent the escape of a person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense so long as the actor believes that the force employed creates no substantial risk of injury to innocent persons.

(5) The justification for the use of force afforded by this act is unavailable when:

(a) The officer's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(b) His error is due to ignorance or mistake as to the provisions of the code, any other provisions of the criminal law or the law governing the legality of an arrest or search.

c. When the officer is justified under N.J.S.2C:3-3 to 2C:3-8 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 382

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

94 INTER-DEPARTMENTAL ACCOUNTS
70 Government Direction, Management and Control
74 General Government Services
CAPITAL CONSTRUCTION

08-9450 Capital Projects - Statewide	\$3,500,000
Total Capital Construction Appropriation, General Government Services	\$3,500,000
<i>Capital Projects:</i>	
08 Statewide Capital Projects:	
Battleship U.S.S. New Jersey Refurbishment and Visitors Center	\$3,500,000

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 383

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

66 DEPARTMENT OF LAW AND PUBLIC SAFETY
10 Public Safety and Criminal Justice
13 Special Law Enforcement Activities
GRANTS-IN-AID

22-1410 New Jersey Racing Commission	\$6,000,000
Total Grants-In-Aid Appropriation,	
Special Law Enforcement Activities	\$6,000,000
<i>Grants-In-Aid:</i>	
22 New Jersey Thoroughbred Horsemen's Association . .	\$3,900,000
22 New Jersey Standardbred Breeders and Owners Association	\$2,100,000

Of the amount hereinabove appropriated, \$3,900,000 shall be deposited in an interest bearing account under the jurisdiction of the commission and the Racing Secretaries of the Meadowlands and Monmouth Park, to be distributed to benefit thoroughbred horsemen as provided herein. The remaining \$2,100,000 shall be deposited in an interest bearing account under the jurisdiction of the commission and the Racing Secretaries of the Meadowlands and Freehold Raceway, to be distributed to benefit standardbred horsemen as provided herein. Of the \$3,900,000 to be distributed to benefit thoroughbred horsemen, \$113,333 shall be distributed to the New Jersey Thoroughbred Horsemen's Benevolent Association, to be distributed to programs designed to aid horsemen and horsemen's organizations. The remaining \$3,786,667 shall be used solely to supplement thoroughbred purses at the tracks designated herein. Interest earned on the account shall be distributed to the New Jersey Thoroughbred Horsemen's Association to be used specifically for an owner/trainer incentive awards program to encourage participation in New Jersey racing, and such program shall be designated, implemented and maintained by the association in conjunction with the Racing Secretaries of Monmouth Park and the Meadowlands. Money remaining in the account at the end of the calendar year shall be available to supplement purses in the following year.

Thoroughbred purse supplements distributed from the amount appropriated hereinabove shall be reconciled by the commission and the respective Racing Secretary with the track operator in writing, on a weekly basis, and payment shall be made within the same time period to the track operator's purse account. The track operator shall

continue the practice of exercising responsibility for tax accounting on the distribution of the amounts appropriated hereinabove that are used in supplementing purses. The thoroughbred purse supplements distributed from the amounts appropriated hereinabove shall be paid over and above the contract rate in effect at that thoroughbred track in calendar year 2001. The commission shall coordinate with the respective Racing Secretary as to the allotment of thoroughbred purse supplements to the overnight purse schedule at each track, and thoroughbred purse supplements from the amounts appropriated hereinabove shall not be allocated to any of the following unless the commission receives written approval from the New Jersey Thoroughbred Horsemen's Association: (1) races that have any type of subscription fee, including but not limited to nomination fee (whether stipulated as free or otherwise), entry fee, start fee, or supplementary nomination, (2) races that are advertised as "guaranteed," wherein fees or funds are deducted from the gross value of the advertised purse to determine the "track's share," (3) races that are defined as "overnight stakes," (4) races that are defined as "stakes." Purse supplements from the amounts appropriated hereinabove shall be applied to purses at the Monmouth Park Thoroughbred Meet during those days designated as "Monmouth Park" days and the Meadowlands Thoroughbred Meeting during those days designated as "Meadowlands" days only and shall not apply to any other track that opts to run its meet at either Monmouth Park or the Meadowlands. Purse supplements from the amounts appropriated hereinabove shall be applied only to purses at a track that runs a "Meet" that consists of a complement of at least 45 race days with an average of at least nine live thoroughbred events each race day.

Of the \$2,100,000 to be distributed to benefit standardbred horsemen, the commission may, in consultation with the New Jersey Standardbred Breeders and Owners' Association, distribute up to \$67,333 to the association for programs designed to aid horsemen. All remaining money shall be used solely to supplement standardbred purses at Freehold Raceway and the Meadowlands, with each track receiving a share according to the following formula: A/B , where A equals the total amount of standardbred overnight purses distributed by that racetrack in calendar year 2001 and where B equals the total amount of standardbred overnight purses distributed by both racetracks in calendar year 2001. Moneys remaining in the account at the end of the calendar year shall be available to supplement standardbred purses in the following year.

Standardbred purse supplements distributed from the amount appropriated hereinabove shall be reconciled by the commission and the respective Racing Secretary with the track operator in writing, on a weekly basis, and payment shall be made within the same time period to the track operator's purse account. The track operator shall continue the practice of exercising responsibility for tax accounting on the distribution of the amounts appropriated hereinabove that are used in supplementing purses. Standardbred purse supplements distributed from the amounts appropriated hereinabove shall be paid over and above the contract rate in effect at that standardbred track in calendar year 2001. The commission shall coordinate with the respective Racing Secretary as to the allotment of standardbred purse supplements to the overnight purse schedule at each track, and no purse supplement from the amount appropriated hereinabove shall be allocated to any of the following unless the commission receives written approval from the New Jersey Standardbred Breeders and Owners' Association: (1) races that have any type of subscription fee, including but not limited to nomination fee (whether stipulated as free or otherwise), entry fee, start fee, or supplementary nomination, (2) races that are advertised as "guaranteed," wherein fees or funds are deducted from the gross value of the advertised purse to determine the "track's share," (3) races that are defined as "overnight stakes," or (4) races that are defined as "stakes."

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 384

AN ACT concerning limits on certain political contributions and amending R.S.19:34-45 and P.L.1993, c.65.

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

1. R.S.19:34-45 is amended to read as follows:

Contributions by certain corporations.

19:34-45. No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit,

insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by the state or any county or municipality, and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

The provisions of this section shall not apply to any corporation carrying on the business of a co-generation facility, as defined in subsection c. of section 1 of P.L.2000, c.156 (C.54:15B-2.2), or to any corporation carrying on the business of a retail seller that extends credit, pursuant to the provisions of the "Retail Installment Sales Act of 1960" P.L.1960, c.40 (C.17:16C-1 et seq.), or to any corporation, person, trustee or trustees, owning or holding the majority of stock in either such corporation.

2. Section 19 of P.L.1993, c.65 (C.19:44A-11.4) is amended to read as follows:

C.19:44A-11.4 Contributions to political party, leadership committees; limitations.

19. a. (1) Except as otherwise provided in paragraph (2) of this subsection, no individual, no corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, no labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, no political committee, continuing political committee, candidate committee or joint candidates committee or any other group, shall pay or make any contribution of money or other thing of value to the campaign treasurer, deputy treasurer or other representative of the State committee of a political party or the campaign treasurer, deputy campaign treasurer or other representative of any legislative leadership committee, which in the aggregate exceeds \$25,000 per year, or in the case of a joint candidates committee when that is the only committee established by the candidates, \$25,000 per year per candidate in the joint candidates committee, or in the case of a candidate committee and a joint candidates committee when both are established by a candidate, \$25,000 per year from that candidate. No campaign treasurer, deputy campaign treasurer or other representative of the State committee of a political party or campaign treasurer, deputy campaign treasurer or

other representative of any legislative leadership committee shall knowingly accept from an individual, a corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, a labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, a political committee, a continuing political committee, a candidate committee or a joint candidates committee or any other group, any contribution of money or other thing of value which in the aggregate exceeds \$25,000 per year, or in the case of a joint candidates committee when that is the only committee established by the candidates, \$25,000 per year per candidate in the joint candidates committee, or in the case of a candidate committee and a joint candidates committee when both are established by a candidate, \$25,000 per year from that candidate.

Adjustments to the limits established in this paragraph which have been made by the Election Law Enforcement Commission, pursuant to section 22 of P.L.1993, c.65 (C.19:44A-7.2), prior to the effective date of P.L.2001, c.384 are rescinded. The limits established in this paragraph shall remain as stated in this paragraph until subsequently adjusted by the commission in the manner prescribed by section 22 of P.L.1993, c.65 (C.19:44A-7.2).

(2) No national committee of a political party shall pay or make any contribution of money or other thing of value to the campaign treasurer, deputy treasurer or other representative of the State committee of a political party which in the aggregate exceeds \$50,000 per year, and no campaign treasurer, deputy campaign treasurer or other representative of the State committee of a political party shall knowingly accept from the national committee of a political party any contribution of money or other thing of value which in the aggregate exceeds \$50,000 per year.

b. No individual, no corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, no labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, no political committee, continuing political committee, candidate committee or joint candidates committee or any other group, shall pay or make any contribution of money or other thing of value to any county committee of a political party, which in the aggregate exceeds \$25,000 per year, or in the case of a joint candidates

committee when that is the only committee established by the candidates, \$25,000 per year per candidate in the joint candidates committee, or in the case of a candidate committee and a joint candidates committee when both are established by a candidate, \$25,000 per year from that candidate. No campaign treasurer, deputy campaign treasurer or other representative of a county committee of a political party shall knowingly accept from an individual, a corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, a labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, a political committee, a continuing political committee, a candidate committee or a joint candidates committee or any other group, any contribution of money or other thing of value which in the aggregate exceeds \$25,000 per year, or in the case of a joint candidates committee when that is the only committee established by the candidates, \$25,000 per year per candidate in the joint candidates committee, or in the case of a candidate committee and a joint candidates committee when both are established by a candidate, \$25,000 per year from that candidate.

c. No individual, no corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, no labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, no political committee, continuing political committee, candidate committee or joint candidates committee or any other group shall pay or make any contribution of money or other thing of value to any municipal committee of a political party, which in the aggregate exceeds \$5,000 per year, or in the case of a joint candidates committee when that is the only committee established by the candidates, \$5,000 per year per candidate in the joint candidates committee, or in the case of a candidate committee and a joint candidates committee when both are established by a candidate, \$5,000 per year from that candidate. No campaign treasurer, deputy campaign treasurer or other representative of a municipal committee of a political party shall knowingly accept from an individual, a corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, a labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining,

or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, a political committee, a continuing political committee, a candidate committee or a joint candidates committee or any other group, any contribution of money or other thing of value which in the aggregate exceeds \$5,000 per year, or in the case of a joint candidates committee when that is the only committee established by the candidates, \$5,000 per year per candidate in the joint candidates committee, or in the case of a candidate committee and a joint candidates committee when both are established by a candidate, \$5,000 per year from that candidate.

No county committee of a political party in any county shall pay or make any contribution of money or other thing of value to a municipal committee of a political party in a municipality not located in that county which in the aggregate exceeds the amount of aggregate contributions which, under this subsection, a continuing political committee is permitted to pay or make to a municipal committee of a political party. No campaign treasurer, deputy campaign treasurer or other representative of a municipal committee of a political party in any municipality shall knowingly accept from any county committee of a political party in any county other than the county in which the municipality is located any contribution of money or other thing of value which in the aggregate exceeds the amount of contributions permitted to be so paid or made under that subsection.

d. For the purpose of determining the amount of a contribution to be attributed as given by each candidate in a joint candidates committee, the amount of the contribution by such a committee shall be divided equally among all the candidates in the committee.

3. Section 20 of P.L.1993, c.65 (C.19:44A-11.5) is amended to read as follows:

C.19:44A-11.5 Contributions to political and continuing political committees; limitations.

20. a. No candidate who has established only a candidate committee, his campaign treasurer, deputy treasurer or candidate committee shall pay or make any contribution of money or other thing of value to a political committee, other than a political committee which is organized to, or does, aid or promote the passage or defeat of a public question in any election, or a continuing political committee, which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election, or in the case of a continuing political committee, \$7,200 per year, and no candidates who have established only a joint candidates committee, their campaign treasurer, deputy campaign treasurer or joint candidates

committee shall pay or make any contribution of money or other thing of value to such a political committee or continuing political committee which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election per candidate in the joint candidates committee, or in the case of a continuing political committee, \$7,200 per year per candidate in the joint candidates committee, and no candidate who has established both a candidate committee and a joint candidates committee shall pay or make any contribution of money or other thing of value which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election from that candidate, or in the case of a continuing political committee, \$7,200 per year from that candidate. No political committee, other than a political committee which is organized to, or does, aid or promote the passage or defeat of a public question in any election, or a continuing political committee, shall knowingly accept from a candidate who has established only a candidate committee, his campaign treasurer, deputy treasurer or candidate committee, any contribution of money or other thing of value which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election, or in the case of a continuing political committee, \$7,200 per year, and no such political committee or continuing political committee shall knowingly accept from candidates who have established only a joint candidates committee, their campaign treasurer, deputy campaign treasurer, or joint candidates committee, any contribution of money or other thing of value which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election per candidate in the joint candidates committee, or in the case of a continuing political committee, \$7,200 per year per candidate in the joint candidates committee, and no such political committee or continuing political committee shall knowingly accept from a candidate who has established both a candidate committee and a joint candidates committee any contribution of money or other thing of value which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election from that candidate, or in the case of a continuing political committee, \$7,200 per year from that candidate. For the purpose of determining the amount of a contribution to be attributed as given by each candidate in a joint candidates committee, the amount of the contribution by such a committee shall be divided equally among all the candidates in the committee.

b. No political committee, other than a political committee which is organized to, or does, aid or promote the passage or defeat of a public question in any election, and no continuing political committee shall pay or make any contribution of money or other thing of value to another political committee, other than a political committee which is organized

to, or does, aid or promote the passage or defeat of a public question in any election, or another continuing political committee which in the aggregate exceeds, in the case of a recipient continuing political committee, \$7,200 per year, or in the case of a recipient political committee, \$7,200 per election. No political committee, other than a political committee which is organized to, or does, aid or promote the passage or defeat of a public question in any election, and no continuing political committee shall knowingly accept from another political committee, other than a political committee which is organized to, or does, aid or promote the passage or defeat of a public question in any election, or another continuing political committee any contribution of money or other thing of value which in the aggregate exceeds, in the case of a recipient continuing political committee, \$7,200 per year, or in the case of a recipient political committee, \$7,200 per election.

c. No individual, no corporation of any kind organized and incorporated under the laws of this State or any other state or any country other than the United States, no labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employees concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment, nor any other group, shall pay or make any contribution of money or other thing of value to a political committee, other than a political committee which is organized to, or does, aid or promote the passage or defeat of a public question in any election, or a continuing political committee, which in the aggregate exceeds, in the case of such a political committee, \$7,200 per election, or in the case of a continuing political committee, \$7,200 per year, and no such political committee or continuing political committee shall knowingly accept any contribution in excess of those amounts from an individual or from such corporation, labor organization, or other group.

4. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 385

AN ACT imposing liability on employers who discharge or discriminate against employees for displaying the American flag.

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

C.10:5-12.6 Liability imposed on employers who discharge, discriminate against employee who displays the American flag.

1. No employer, public or private, shall discharge or discriminate against an employee in compensation or in terms, conditions or privileges of employment for displaying the American flag on the employee's person or work station, provided the display does not substantially and materially interfere with the employee's job duties. An employer who discharges or discriminates against an employee as described in this section shall be liable to the employee for damages caused by the discharge or discrimination, including punitive damages, and for reasonable attorney's fees as part of the costs of any action for damages. If the court determines that the action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 386

AN ACT concerning chapter 9 of Title 12A of the New Jersey Statutes and revising 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.12A:9-102 is amended to read as follows:

Definitions and index of definitions.

12A:9-102. Definitions and Index of Definitions.

(a) Chapter 9 definitions. In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for

the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables and bondable transition property. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(8.1) "Bondable transition property" shall have the meaning set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in 12A:7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

- (34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
- (A) crops grown, growing, or to be grown, including:
 - (i) crops produced on trees, vines, and bushes; and
 - (ii) aquatic goods produced in aquacultural operations;
 - (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
 - (C) supplies used or produced in a farming operation; or
 - (D) products of crops or livestock in their unmanufactured states.
- (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- (36) "File number" means the number assigned to an initial financing statement pursuant to 12A:9-519 (a).
- (37) "Filing office" means an office designated in 12A:9-501 as the place to file a financing statement.
- (38) "Filing-office rule" means a rule adopted pursuant to 12A:9-526.
- (39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- (40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying 12A:9-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- (41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- (42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- (43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in

connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under 12A:9-203 (d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in 12A:9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 12A:9-203 (d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B) or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B) (C) or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in 12A:9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), 12A:4-210, or 12A:5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other chapters. The following definitions in other chapters apply to this chapter:

"Applicant" 12A:5-102.

"Beneficiary" 12A:5-102.

"Broker" 12A:8-102.

"Certificated security" 12A:8-102.

"Check" 12A:3-104.

“Clearing corporation” 12A:8-102.
 “Contract for sale” 12A:2-106.
 “Customer” 12A:4-104.
 “Entitlement holder” 12A:8-102.
 “Financial asset” 12A:8-102.
 “Holder in due course” 12A:3-302.
 “Issuer” (with respect to a letter of
 credit or letter-of-credit right) 12A:5-102.
 “Issuer” (with respect to a security) 12A:8-201.
 “Lease” 12A:2A-103.
 “Lease agreement” 12A:2A-103.
 “Lease contract” 12A:2A-103.
 “Leasehold interest” 12A:2A-103.
 “Lessee” 12A:2A-103.
 “Lessee in ordinary course of business” 12A:2A-103.
 “Lessor” 12A:2A-103.
 “Lessor’s residual interest” 12A:2A-103.
 “Letter of credit” 12A:5-102.
 “Merchant” 12A:2-104.
 “Negotiable instrument” 12A:3-104.
 “Nominated person” 12A:5-102.
 “Note” 12A:3-104.
 “Proceeds of a letter of credit” 12A:5-114.
 “Prove” 12A:3-103.
 “Sale” 12A:2-106.
 “Securities account” 12A:8-501.
 “Securities intermediary” 12A:8-102.
 “Security” 12A:8-102.
 “Security certificate” 12A:8-102.
 “Security entitlement” 12A:8-102.
 “Uncertificated security” 12A:8-102.

(c) Chapter 1 definitions and principles. Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

2. N.J.S.12A:9-103 is amended to read as follows:

Purchase-money security interest; application of payments; burden of establishing.

12A:9-103. Purchase-Money Security Interest; Application of Payments; Burden of Establishing.

(a) Definitions. In this section:

(1) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) “purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor’s inventory purchase-money security interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties’ agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor’s intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) Burden of proof in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. The limitation of the rules in subsections (e), (f) and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

3. N.J.S.12A:9-104 is amended to read as follows:

Control of deposit account.

12A:9-104. Control of Deposit Account.

(a) Requirements for control. A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account.

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

4. N.J.S.12A:9-105 is amended to read as follows:

Control of electronic chattel paper.

12A:9-105. Control of Electronic Chattel Paper.

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

5. N.J.S.12A:9-106 is amended to read as follows:

Control of investment property.

12A:9-106. Control of Investment Property.

(a) Control under 12A:8-106. A person has control of a certificated security, uncertificated security, or security entitlement as provided in 12A:8-106.

(b) Control of commodity contract. A secured party has control of a commodity contract if:

- (1) the secured party is the commodity intermediary with which the commodity contract is carried; or
- (2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

6. N.J.S.12A:9-108 is amended to read as follows:

Sufficiency of description.

12A:9-108. Sufficiency of Description.

(a) Sufficiency of description. Except as otherwise provided in subsections (c), (d), (e) and (f), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

- (1) specific listing;
- (2) category;
- (3) except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;
- (4) quantity;
- (5) computational or allocational formula or procedure; or
- (6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(d) Investment property. Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

- (1) the collateral by those terms or as investment property; or
- (2) the underlying financial asset or commodity contract.

(e) When description by type insufficient. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

- (1) a commercial tort claim; or
- (2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account

(f) Bondable transition property. A description of bondable transition property is sufficient if it refers to the bondable stranded costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), establishing the bondable transition property.

7. N.J.S.12A:9-109 is amended to read as follows:

Scope.

12A:9-109. Scope.

(a) General scope of chapter. Except as otherwise provided in subsections (c) and (d), this chapter applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under 12A:2-401, 12A:2-505, 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and

(6) a security interest arising under 12A:4-210 or 12A:5-118.

(b) Security interest in secured obligation. The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(c) Extent to which chapter does not apply. This chapter does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this chapter; or

(2) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 12A:5-114.

(d) Inapplicability of chapter. This chapter does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 12A:9-333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 12A:9-315 and 12A:9-322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

- (10) a right of recoupment or set-off, but:
 - (A) 12A:9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (B) 12A:9-404 applies with respect to defenses or claims of an account debtor;
- (11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (A) liens on real property in 12A:9-203 and 12A:9-308;
 - (B) fixtures in 12A:9-334; and
 - (C) fixture filings in 12A:9-501, 12A:9-502, 12A:9-512, 12A:9-516 and 12A:9-519; and
 - (D) security agreements covering personal and real property in 12A:9-604;
- (12) an assignment of a claim arising in tort, other than a commercial tort claim, but 12A:9-315 and 12A:9-322 apply with respect to proceeds and priorities in proceeds;
- (13) an assignment of a deposit account in a consumer transaction, but 12A:9-315 and 12A:9-322 apply with respect to proceeds and priorities in proceeds; or
- (14) a transfer by a government or governmental unit.

8. N.J.S.12A:9-201 is amended to read as follows:

General effectiveness of security agreement.

12A:9-201. General Effectiveness of Security Agreement.

(a) General effectiveness. Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. A transaction subject to this chapter is subject to any applicable rule of law which establishes a different rule for consumers and to (1) any other statute or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (2) any consumer protection statute or regulation of this State.

(c) Other applicable law controls. In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. This chapter does not:

- (1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or
- (2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

9. N.J.S.12A:9-203 is amended to read as follows:

Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

12A:9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.

(a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under 12A:9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 12A:8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107 pursuant to the debtor's security agreement.

(c) Other Uniform Commercial Code provisions. Subsection (b) is subject to 12A:4-210 on the security interest of a collecting bank, 12A:5-118 on the security interest of a letter-of-credit issuer or nominated person, 12A:9-110 on a security interest arising under Chapter 2 or 2A, and 12A:9-206 on security interests in investment property.

(d) When person becomes bound by another person's security agreement. A person becomes bound as debtor by a security agreement entered

into by another person if, by operation of law other than this chapter or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b) (3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by 12A:9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) Security entitlement carried in securities account. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

(j) Bondable transition property. Bondable transition property is presently existing property for all purposes, including for purposes of subsection (b) (2), whether or not the revenues and proceeds arising under the property have accrued and notwithstanding that the value of the property may depend upon customer use of electricity or performance of service by electric public utilities, or both.

10. N.J.S.12A:9-204 is amended to read as follows:

After-acquired property, future advances.

12A:9-204. After-acquired Property; Future Advances.

(a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

11. N.J.S.12A:9-205 is amended to read as follows:

Use or disposition of collateral permissible.

12A:9-205. Use or Disposition of Collateral Permissible.

(a) When security interest not invalid or fraudulent. A security interest is not invalid or fraudulent against creditors solely because:

(1) the debtor has the right or ability to:

(A) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) collect, compromise, enforce, or otherwise deal with collateral;

(C) accept the return of collateral or make repossessions; or

(D) use, commingle, or dispose of proceeds; or

(2) the secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed. This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

12. N.J.S.12A:9-206 is amended to read as follows:

Security interest arising in purchase or delivery of financial asset.

12A:9-206. Security Interest Arising in Purchase or Delivery of Financial Asset.

(a) Security interest when person buys through securities intermediary. A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) the agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. The security interest described in subsection (c) secures the obligation to make payment for the delivery.

13. N.J.S.12A:9-207 is amended to read as follows:

14. N.J.S.12A:9-208 is amended to read as follows:

Rights and duties of secured party having possession or control of collateral.

12A:9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral.

(a) Duty of care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction;

or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

15. N.J.S.12A:9-209 is amended to read as follows:

Additional duties of secured party having control of collateral.

12A:9-208. Additional Duties of Secured Party Having Control of Collateral.

(a) Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under 12A:9-104

(a) (2) shall send to the bank with which the deposit account is maintained

an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under 12A:9-104

(a) (3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under 12A:9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under 12A:8-106 d. (2) or 12A:9-106 (b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) a secured party having control of a letter-of-credit right under 12A:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

16. N.J.S.12A:9-210 is amended to read as follows:

Duties of secured party if account debtor has been notified of assignment.

12A:9-209. Duties of Secured Party If Account Debtor Has Been Notified of Assignment.

(a) Applicability of section. Except as otherwise provided in subsection (c), this section applies if:

(1) there is no outstanding secured obligation; and
 (2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under 12A:9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

17. N.J.S.12A:9-211 is amended to read as follows:

Request for accounting; request regarding list of collateral or statement of account.

12A:9-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

18. N.J.S.12A:9-301 is amended to read as follows:

Law governing perfection and priority of security interests.

12A:9-301. Law Governing Perfection and Priority of Security Interests.

Except as otherwise provided in sections 12A:9-303 through 12A:9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection,

the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(5) Notwithstanding paragraph (1), the local law of this State shall govern the perfection, the effect of perfection or nonperfection, and the priority of a security interest in bondable transition property.

19. N.J.S.12A:9-303 is amended to read as follows:

Law governing perfection and priority of security interests in goods covered by a certificate of title.

12A:9-303. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

20. N.J.S.12A:9-304 is amended to read as follows:

Law governing perfection and priority of security interests in deposit accounts.

12A:9-304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts.

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction. The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

21. N.J.S.12A:9-305 is amended to read as follows:

Law governing perfection and priority of security interests in investment property.

12A:9-305. Law Governing Perfection and Priority of Security Interests in Investment Property.

(a) Governing law: general rules. Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in 12A:8-110 d. governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in 12A:8-110 e. governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) Commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this chapter, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:

- (1) perfection of a security interest in investment property by filing;
- (2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
- (3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

22. N.J.S.12A:9-306 is amended to read as follows:

Law governing perfection and priority of security interests in letter-of-credit rights.

12A:9-306. Law Governing Perfection and Priority of Security Interests in Letter-of-Credit Rights.

(a) Governing law: issuer's or nominated person's jurisdiction. Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in 12A:5-116.

(c) When section not applicable. This section does not apply to a security interest that is perfected only under 12A:9-308 (d).

23. N.J.S.12A:9-307 is amended to read as follows:

Location of debtor.

12A:9-307. Location of Debtor.

(a) "Place of business." In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc. A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) Location of registered organization organized under state law. A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) Continuation of location: change in status of registered organization. A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) Location of United States. The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. A foreign air carrier under the Federal Aviation Act of 1958, as amended (49 U.S.C. s.1301 et seq.), is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this part. This section applies only for purposes of this part.

24. N.J.S.12A:9-308 is amended to read as follows:

When security interest or agricultural lien is perfected; continuity of perfection.

12A:9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection.

(a) Perfection of security interest. Except as otherwise provided in this section and 12A:9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in 12A:9-310 through 12A:9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in 12A:9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.

(d) Supporting obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

25. N.J.S.12A:9-309 is amended to read as follows:

Security interest perfected upon attachment.

12A:9-309. Security Interest Perfected upon Attachment.

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in 12A:9-311 (b) with respect to consumer goods that are subject to a statute or treaty described in 12A:9-311 (a);

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

- (4) a sale of a promissory note;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of the collateral;
- (7) security interest of a collecting bank arising under 12A:4-210;
- (8) a security interest of an issuer or nominated person arising under 12A:5-118;
- (9) a security interest arising in the delivery of a financial asset under 12A:9-206 (c);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

26. N.J.S.12A:9-310 is amended to read as follows:

When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

12A:9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.

(a) General rule: perfection by filing. Except as otherwise provided in subsection (b) and 12A:9-312 (b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under 12A:9-308 (d), (e), (f) or (g);
- (2) that is perfected under 12A:9-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in of 12A:9-311 (a);
- (4) in goods in possession of a bailee which is perfected under 12A:9-312 (d) (1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under 12A:9-312 (e), (f) or (g);
- (6) in collateral in the secured party's possession under 12A:9-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under 12A:9-313;

(8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under 12A:9-314;

(9) in proceeds which is perfected under 12A:9-315; or

(10) that is perfected under 12A:9-316.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

27. N.J.S.12A:9-311 is amended to read as follows:

Perfection of security interests in property subject to certain statutes, regulations, and treaties.

12A:9-311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties.

(a) Security interest subject to other law. Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 12A:9-310 (a);

(2) the "motor vehicle certificate of ownership law," R.S.39:10-1 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152 (C.12:7A-1 et seq.) or successor statutes or law; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d), 12A:9-313 and 12A:9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. Except as otherwise provided in subsection (d) and 12A:9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the require-

ments prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

(d) Inapplicability to certain inventory. During any period in which collateral subject to a statute specified in subsection (a) (2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

28. N.J.S.12A:9-312 is amended to read as follows:

Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

12A:9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in 12A:9-315 (c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under 12A:9-314;

(2) and except as otherwise provided in 12A:9-308 (d), a security interest in a letter-of-credit right may be perfected only by control under 12A:9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under 12A:9-313.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f) or (g) expires, perfection depends upon compliance with this chapter.

29. N.J.S.12A:9-313 is amended to read as follows:

When possession by or delivery to secured party perfects security interest without filing.

12A:9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 12A:8-301.

(b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a

security interest in the goods by taking possession of the goods only in the circumstances described in 12A:9-316 (d).

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 12A:8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or 12A:8-301 (a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation. A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

30. N.J.S.12A:9-314 is amended to read as follows:

Perfection by control.

12A:9-314. Perfection by Control.

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under 12A:9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

31. N.J.S.12A:9-315 is amended to read as follows:

Secured party's rights on disposition of collateral and in proceeds.

12A:9-315. Secured Party's Rights on Disposition of Collateral and in Proceeds.

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this chapter and in 12A:2-403(2):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof

unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by 12A:9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d) (1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under 12A:9-515 or is terminated under 12A:9-513; or

(2) the 21st day after the security interest attaches to the proceeds.

32. N.J.S.12A:9-316 is amended to read as follows:

Continued perfection of security interest following change in governing law.

12A:9-316. Continued Perfection of Security Interest Following Change in Governing Law.

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in 12A:9-301 (1) or 12A:9-305 (c) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this State. Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under 12A:9-311(b) or 12A:9-313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) the expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

33. N.J.S.12A:9-317 is amended to read as follows:

Interests that take priority over or take free of security interest or agricultural lien.

12A:9-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under 12A:9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in 12A:9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral

without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in 12A:9-320 and 12A:9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

34. N.J.S.12A:9-318 is amended to read as follows:

No Interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

12A:9-318. No Interest Retained in Right to Payment That Is Sold; Rights and Title of Seller of Account or Chattel Paper with Respect to Creditors and Purchasers.

(a) Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

35. N.J.S.12A:9-319 is amended to read as follows:

Rights and title of consignee with respect to creditors and purchasers.

12A:9-319. Rights and Title of Consignee with Respect to Creditors and Purchasers.

(a) Consignee has consignor's rights. Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

36. N.J.S.12A:9-320 is amended to read as follows:

Buyer of goods.

12A:9-320. Buyer of Goods.

(a) Buyer in ordinary course of business. Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes;

and

(4) before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by 12A:9-316 (a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under 12A:9-313.

37. N.J.S.12A:9-321 is amended to read as follows:

Licensee of general intangible and lessee of goods in ordinary course of business.

12A:9-321. Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business.

(a) "Licensee in ordinary course of business." In this section, "licensee in ordinary course of business" means a person that becomes a licensee of

a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

38. N.J.S.12A:9-322 is amended to read as follows:

Priorities among conflicting security interests in and agricultural liens on same collateral.

12A:9-322. Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral.

(a) General priority rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. For the purposes of subsection (a) (1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under 12A:9-327, 12A:9-328, 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral;

and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). Subsections (a) through (e) are subject to:

(1) subsection (g) and the other provisions of this part;

(2) 12A:4-210 with respect to a security interest of a collecting bank;

(3) 12A:5-118 with respect to a security interest of an issuer or nominated person; and

(4) 12A:9-110 with respect to a security interest arising under Chapter 2 or 2A.

(g) Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

39. N.J.S.12A:9-323 is amended to read as follows:

Future advances.

12A:9-323. Future Advances.

(a) When priority based on time of advance. Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under 12A:9-322(a) (1), perfection of the security

interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under 12A:9-309 when it attaches; or

(B) temporarily under 12A:9-312 (e), (f) or (g); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 12A:9-309 or 12A:9-312 (e), (f) or (g).

(b) Lien creditor. Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes, or a consignee.

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

40. N.J.S.12A:9-324 is amended to read as follows:

Priority of purchase-money security interests.**12A:9-324. Priority of Purchase-Money Security Interests.**

(a) General rule: purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in 12A:9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Inventory purchase-money priority. Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in 12A:9-330, and, except as otherwise provided in 12A:9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. Subsections (b) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under 12A:9-312 (f), before the beginning of the 20-day period thereunder.

(d) Livestock purchase-money priority. Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise

provided in 12A:9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. Subsections (d) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under 12A:9-312(f), before the beginning of the 20-day period thereunder.

(f) Software purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in 12A:9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d) or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, 12A:9-322 (a) applies to the qualifying security interests.

41. N.J.S.12A:9-325 is amended to read as follows:

Priority of security interests in transferred collateral.

12A:9-325. Priority of Security Interests in Transferred Collateral.

(a) Subordination of security interest in transferred collateral. Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under 12A:9-322(a) or 12A:9-324; or

(2) arose solely under 12A:2-711(3) or 12A:2A-508(5).

42. N.J.S.12A:9-326 is amended to read as follows:

Priority of security interests created by new debtor.

12A:9-326. Priority of Security Interests Created by New Debtor.

(a) Subordination of security interest created by new debtor. Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under 12A:9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under 12A:9-508.

(b) Priority under other provisions; multiple original debtors. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under 12A:9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

43. N.J.S.12A:9-327 is amended to read as follows:

Priority of security interests in deposit account.

12A:9-327. Priority of Security Interests in Deposit Account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under 12A:9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under 12A:9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under 12A:9-104 (a) (3) has priority over a security interest held by the bank with which the deposit account is maintained.

44. N.J.S. 12A:9-328 is amended to read as follows:

Priority of security interests in investment property.

12A:9-328. Priority of Security Interests in Investment Property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under 12A:9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under 12A:9-106 rank according to priority in time of:

(A) if the collateral is a security, obtaining control;

(B) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under 12A:8-106 (d) (1), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under 12A:8-106 (d) (2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under 12A:8-106 (d) (3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in

12A:9-106 (b) (2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under 12A:9-313 (a) and not by control under 12A:9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under 12A:9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by 12A:9-322 and 12A:9-323.

45. N.J.S.12A:9-329 is amended to read as follows:

Priority of security interests in letter-of-credit right.

12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under 12A:9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under 12A:9-314 rank according to priority in time of obtaining control.

46. N.J.S.12A:9-330 is amended to read as follows:

Priority of purchaser of chattel paper or instrument.

12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 12A:9-105; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 12A:9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in 12A:9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) 12A:9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in 12A:9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

47. N.J.S.12A:9-331 is amended to read as follows:

Priority of rights of purchasers of instruments, documents, and securities under other chapters; priority of interests in financial assets and security entitlements under chapter 8.

12A:9-331. Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Chapters; Priority of Interests in Financial Assets and Security Entitlements Under Chapter 8.

(a) Rights under Chapters 3, 7, and 8 not limited. This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapters 3, 7, and 8.

(b) Protection under Chapter 8. This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8.

(c) Filing not notice. Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

48. N.J.S.12A:9-332 is amended to read as follows:

Transfer of money; transfer of funds from deposit account.

12A:9-332. Transfer of Money; Transfer of Funds from Deposit Account.

(a) Transferee of money. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

49. N.J.S.12A:9-333 is amended to read as follows:

Priority of certain liens arising by operation of law.

12A:9-333. Priority of Certain Liens Arising by Operation of Law.

(a) "Possessory lien." In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) which is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

50. N.J.S.12A:9-334 is amended to read as follows:

Priority of security interests in fixtures and crops.

12A:9-334. Priority of Security Interests in Fixtures and Crops.

(a) Security interest in fixtures under this chapter. A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

- (1) the security interest is a purchase-money security interest;
- (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or the owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in 12A:9-311(a)(2).

(f) Priority based on consent, disclaimer, or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of paragraph (f)(2) priority. The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails. Subsection (i) prevails over any inconsistent provisions of State law.

51. N.J.S.12A:9-335 is amended to read as follows:

Accessions.

12A:9-335. Accessions.

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under 12A:9-311 (b).

(e) Removal of accession after default. After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

52. N.J.S.12A:9-336 is amended to read as follows:

Commingled goods.

12A:9-336. Commingled Goods.

(a) "Commingled goods." In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Priority of security interest. Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

53. N.J.S.12A:9-337 is amended to read as follows:

Priority of security interests in goods covered by certificate of title.

12A:9-337. Priority of Security Interests in Goods Covered by Certificate of Title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under 12A:9-311 (b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

54. N.J.S.12A:9-338 is amended to read as follows:

Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

12A:9-338. Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 12A:9-516 (b) (5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

55. N.J.S.12A:9-340 is amended to read as follows:

Effectiveness of right of recoupment or set-off against deposit account.

12A:9-340. Effectiveness of Right of Recoupment or Set-off Against Deposit Account.

(a) Exercise of recoupment or set-off. Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest. Except as otherwise provided in subsection (c), the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under 12A:9-104 (a) (3), if the set-off is based on a claim against the debtor.

56. N.J.S.12A:9-341 is amended to read as follows:

Bank's Rights and Duties with Respect to Deposit Account.

12A:9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in 12A:9-340 (c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

57. N.J.S.12A:9-342 is amended to read as follows:

Bank's right to refuse to enter into or disclose existence of control agreement.

12A:9-342. Bank's Right to Refuse to Enter into or Disclose Existence of Control Agreement.

This chapter does not require a bank to enter into an agreement of the kind described in 12A:9-104 (a) (2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

58. N.J.S.12A:9-401 is amended to read as follows:

Alienability of debtor's rights.

12A:9-401. Alienability of Debtor's Rights.

(a) Other law governs alienability; exceptions. Except as otherwise provided in subsection (b) and 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.

(b) Agreement does not prevent transfer. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

59. N.J.S.12A:9-403 is amended to read as follows:

Agreement not to assert defenses against assignee.

12A:9-403. Agreement Not to Assert Defenses Against Assignee.

(a) "Value." In this section, "value" has the meaning provided in 12A:3-303 a.

(b) Agreement not to assert claim or defense. Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) for value;
- (2) in good faith;
- (3) without notice of a claim of a property or possessory right to the property assigned; and

(4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under 12A:3-305 a.

(c) When subsection (b) not applicable. Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under 12A:3-305 b.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) the record has the same effect as if the record included such a statement; and

(2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. Except as otherwise provided in subsection (d), this section does not displace law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

60. N.J.S. 12A:9-404 is amended to read as follows:

Rights acquired by assignee; claims and defenses against assignee.

12A:9-404. Rights Acquired by Assignee; Claims and Defenses Against Assignee.

(a) Assignee's rights subject to terms, claims, and defenses; exceptions. Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

61. N.J.S.12A:9-405 is amended to read as follows:

Modification of assigned contract.

12A:9-405. Modification of Assigned Contract.

(a) Effect of modification on assignee. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Applicability of subsection (a). Subsection (a) applies to the extent that:

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under 12A:9-406 (a).

(c) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

62. N.J.S.12A:9-406 is amended to read as follows:

Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

12A:9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e), 12A:2A-303 and 12A:9-407, and

subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in 12A:2A-303 and 12A:9-407 and subject to subsections (h), (i) and (j), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b) (3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b) (3).

(h) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f): R.S.34:15-29 (workers' compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State lottery

winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.) (structured settlement agreements).

(j) Section prevails over specified inconsistent law. Except to the extent otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this State, unless the provision is contained in a statute of this State, refers expressly to this section and states that the provision prevails over this section.

63. N.J.S.12A:9-407 is amended to read as follows:

Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

12A:9-407. Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor's Residual Interest.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, 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

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Effectiveness of certain terms. Except as otherwise provided in 12A:2A-303 (7), a term described in subsection (a) (2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of 12A:2A-303 (4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

64. N.J.S.12A:9-408 is amended to read as follows:

Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

12A:9-408. Restrictions on Assignment of Promissory Notes, Health-care-insurance Receivables, and Certain General Intangibles Ineffective.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. Except as provided in subsection (e), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy

under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this chapter but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over specified inconsistent law. Except to the extent otherwise provided in subsection (f), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this State, unless the provision is contained in a statute of this State, refers expressly to this section and states that the provision prevails over this section.

(f) Inapplicability. Subsection (c) does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c): R.S.34:15-29 (workers' compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.) (structured settlement agreements).

65. N.J.S.12A:9-409 is amended to read as follows:

Restrictions on assignment of letter-of-credit rights ineffective.

12A:9-409. Restrictions on Assignment of Letter-of-credit Rights Ineffective.

(a) Term or law restricting assignment generally ineffective. A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

66. N.J.S.12A:9-501 is amended to read as follows:

Filing office.

12A:9-501. Filing Office.

(a) Filing offices. Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is :

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the Division of Commercial Recording or other office designated by Executive Order, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Division of Commercial Recording or other office designated by Executive Order. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

67. N.J.S.12A:9-502 is amended to read as follows:

Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

12A:9-502. Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement.

(a) Sufficiency of financing statement. Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. Except as otherwise provided in 12A:9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) the record is recorded.

(d) Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

68. N.J.S.12A:9-503 is amended to read as follows:

Name of debtor and secured party

12A:9-503. Name of Debtor and Secured Party.

(a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) Additional debtor-related information. A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

- (1) a trade name or other name of the debtor; or
- (2) unless required under subsection (a) (4) (B), names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. A financing statement may provide the name of more than one debtor and the name of more than one secured party.

69. N.J.S.12A:9-504 is amended to read as follows:

Indication of collateral.

12A:9-504. Indication of Collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

- (1) a description of the collateral pursuant to 12A:9-108; or
- (2) an indication that the financing statement covers all assets or all personal property.

70. N.J.S.12A:9-505 is amended to read as follows:

Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

12A:9-505. Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions.

(a) Use of terms other than "debtor" and "secured party." A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in 12A:9-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor".

(b) Effect of financing statement under subsection (a). This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under 12A:9-311 (b), but the filing or compliance is not of itself a factor in

determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

71. N.J.S.12A:9-506 is amended to read as follows:

Effect of errors or omissions.

12A:9-506. Effect of Errors or Omissions.

(a) Minor errors and omissions. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 12A:9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 12A:9-503 (a), the name provided does not make the financing statement seriously misleading.

(d) "Debtor's correct name." For purposes of 12A:9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

72. N.J.S.12A:9-507 is amended to read as follows:

Effect of certain events on effectiveness of financing statement.

12A:9-507. Effect of Certain Events on Effectiveness of Financing Statement.

(a) Disposition. A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. Except as otherwise provided in subsection (c) and 12A:9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under 12A:9-506.

(c) Change in debtor's name. If a debtor so changes its name that a filed financing statement becomes seriously misleading under 12A:9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

73. N.J.S.12A:9-508 is amended to read as follows:

Effectiveness of financing statement if new debtor becomes bound by security agreement.

12A:9-508. Effectiveness of Financing Statement If New Debtor Becomes Bound by Security Agreement.

(a) Financing statement naming original debtor. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under 12A:9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under 12A:9-203 (d); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under 12A:9-203 (d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under 12A:9-507 (a).

74. N.J.S.12A:9-509 is amended to read as follows:

Persons entitled to file a record.

12A:9-509. Persons Entitled to File a Record.

(a) Person entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under 12A:9-315 (a) (2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under 12A:9-315 (a) (1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under 12A:9-315 (a) (2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 12A:9-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

75. N.J.S.12A:9-510 is amended to read as follows:

Effectiveness of filed record.

12A:9-510. Effectiveness of Filed Record.

(a) Filed record effective if authorized. A filed record is effective only to the extent that it was filed by a person that may file it under 12A:9-509.

(b) Authorization by one secured party of record. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. A continuation statement that is not filed within the six-month period prescribed by 12A:9-515 (d) is ineffective.

76. N.J.S.12A:9-511 is amended to read as follows:

Secured party of record.

12A:9-511. Secured Party of Record.

(a) Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 12A:9-514 (a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 12A:9-514 (b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

77. N.J.S.12A:9-512 is amended to read as follows:

Amendment of financing statement.

12A:9-512. Amendment of Financing Statement.

(a) Amendment of information in financing statement. Subject to 12A:9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed in a filing office described in 12A:9-501(a)(1), provides the information specified in 12A:9-502(b).

(b) Period of effectiveness not affected. Except as otherwise provided in 12A:9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

78. N.J.S.12A:9-513 is amended to read as follows:

Termination statement.

12A:9-513. Termination Statement.

(a) Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in 12A:9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g), 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

79. N.J.S.12A:9-514 is amended to read as follows:

Assignment of powers of secured party of record.

12A:9-514. Assignment of Powers of Secured Party of Record.

(a) Assignment reflected on initial financing statement. Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates;

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under 12A:9-502 (c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than the Uniform Commercial Code.

80. N.J.S.12A:9-515 is amended to read as follows:

Duration and effectiveness of financing statement; effect of lapsed financing statement.

12A:9-515. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement.

(a) Five-year effectiveness. Except as otherwise provided in subsections (b), (e), (f) and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. Except as otherwise provided in subsections (e), (f) and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) Effect of filing continuation statement. Except as otherwise provided in 12A:9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. A record of mortgage that is effective as a financing statement filed as a fixture filing under 12A:9-502 (c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

(h) Bondable transition property. If a filed financing statement relates to a security interest in bondable transition property and the financing statement so states, it is effective until a termination statement is filed.

81. N.J.S.12A:9-516 is amended to read as follows:

What constitutes filing; effectiveness of filing.

12A:9-516. What Constitutes Filing; Effectiveness of Filing.

(a) What constitutes filing. Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by 12A:9-512 or 12A:9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under 12A:9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed or recorded in the filing office described in 12A:9-501 (a) (1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; or

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) in the case of an assignment reflected in an initial financing statement under 12A:9-514 (a) or an amendment filed under 12A:9-514 (b), the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by 12A:9-515 (d).

(c) Rules applicable to subsection (b). For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

82. N.J.S.12A:9-518 is amended to read as follows:

Claim concerning inaccurate or wrongfully filed record.

12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed Record.

(a) Correction statement. A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. A correction statement must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a correction statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by correction statement. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

83. N.J.S.12A:9-519 is amended to read as follows:

Numbering, maintaining, and indexing records; communicating information provided in records.

12A:9-519. Numbering, Maintaining, and Indexing Records; Communicating Information Provided in Records.

(a) Filing office duties. For each record filed in a filing office, the filing office shall:

- (1) assign a unique number to the filed record;
- (2) create a record that bears the number assigned to the filed record and the date and time of filing;
- (3) maintain the filed record for public inspection; and
- (4) index the filed record in accordance with subsections (c), (d) and (e).

(b) File number. A file number assigned after January 1, 2002, must include a digit that:

- (1) is mathematically derived from or related to the other digits of the file number; and
- (2) aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Indexing: general. Except as otherwise provided in subsections (d) and (e), the filing office shall:

- (1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
- (2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing: real-property-related financing statement. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

- (1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and
- (2) to the extent that the law of this State provides for indexing of records or mortgages under the name of the mortgagees, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if the indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing: real-property-related assignment. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under 12A:9-514 (a) or an amendment filed under 12A:9-514 (b):

- (1) under the name of the assignor as grantor; and
- (2) to the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability. The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under 12A:9-515 with respect to all secured parties of record.

(h) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Inapplicability to real property related filing office. Subsections (b) and (h) do not apply to a filing office described in 12A:9-501 (a) (1).

84. N.J.S.12A:9-520 is amended to read as follows:

Acceptance and refusal to accept record.

12A:9-520. Acceptance and Refusal to Accept Record.

(a) Mandatory refusal to accept record. A filing office shall refuse to accept a record for filing for a reason set forth in 12A:9-516 (b) and may refuse to accept a record for filing only for a reason set forth in 12A:9-516 (b).

(b) Communication concerning refusal. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in 12A:9-501 (a) (2), in no event more than two business days after the filing office receives the record.

(c) When filed financing statement effective. A filed financing statement satisfying 12A:9-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, 12A:9-338 applies to a filed financing statement providing information described in 12A:9-516 (b) (5) which is incorrect at the time the financing statement is filed.

(d) Separate application to multiple debtors. If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

85. N.J.S.12A:9-521 is amended to read as follows:

Uniform form of written financing statement and amendment.

12A:9-521. Uniform Form of Written Financing Statement and Amendment.

(a) Initial financing statement form. A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in 12A:9-516 (b):

(Please refer to the Filing Office Copy - National UCC Financing Statement (Form UCC1) (REV. 07/29/98) and to the Filing Office Copy - National UCC Financing Statement Addendum (Form UCC1Ad) (REV.07/29/98).

(b) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in 12A:9-516 (b):

(Please refer to the Filing Office Copy - National UCC Financing Statement Amendment (Form UCC3) (REV.07/29/98) and to the Filing Office Copy - National UCC Financing Statement Amendment Addendum (Form UCC3Ad) (REV.07/29/98).

86. N.J.S.12A:9-522 is amended to read as follows:

Maintenance and destruction of records.

12A:9-522. Maintenance and Destruction of Records.

(a) Post-lapse maintenance and retrieval of information. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under 12A:9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

87. N.J.S.12A:9-523 is amended to read as follows:

Information from filing office; sale or license of records.

12A:9-523. Information from Filing Office; Sale or License of Records.

(a) Acknowledgment of filing written record. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to 12A:9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to 12A:9-519 (a) (1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) Acknowledgment of filing other record. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to 12A:9-519(a)(1); and

(3) the date and time of the filing of the record.

(c) Communication of requested information. The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) has not lapsed under 12A:9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under 12A:9-515 and a record of which is maintained by the filing office under 12A:9-522 (a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) Medium for communicating information. In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(e) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) Public availability of records. At least weekly, the Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

88. N.J.S.12A:9-524 is amended to read as follows:

Delay by filing office.

12A:9-524. Delay by Filing Office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

- (1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and
- (2) the filing office exercises reasonable diligence under the circumstances.

89. N.J.S.12A:9-525 is amended to read as follows:

Fees.

12A:9-525. Fees.

(a) Initial financing statement or other record: general rule. Except as otherwise provided in subsection (d), the fees for filing and indexing records under this part are:

- (1) \$25 for financing statement;
- (2) \$25 for continuation statement;
- (3) \$25 for amendment statement;
- (4) \$25 for partial release;
- (5) \$25 for assignment;
- (6) \$25 termination statement; and
- (7) \$1 for copy of any filed financing statement.

(b) Number of names. Except as otherwise provided in subsection (d), the number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) Response to information request. The fee for responding to a request for information from the filing office, including for issuing a certificate of search showing whether there is on file any financing statement naming a particular debtor, is \$25.

(d) Record of mortgage. This section does not require a fee with respect to a record of mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 12A:9-502 (c). However, the recording

and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

90. N.J.S.12A:9-526 is amended to read as follows:

Filing-office rules.

12A:9-526. Filing-Office Rules.

(a) Adoption of filing-office rules. The Division of Commercial Recording or other office designated by Executive Order shall adopt and publish rules to implement this chapter. The filing-office rules must be:

(1) consistent with this chapter; and

(2) adopted and published in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(b) Harmonization of rules. To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the Division of Commercial Recording, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules, shall:

(1) consult with filing offices in other jurisdictions that enact substantially this part; and

(2) consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

91. N.J.S.12A:9-601 is amended to read as follows:

Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

12A:9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in 12A:9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107 has the rights and duties provided in 12A:9-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) and 12A:9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in 12A:9-607 (c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

92. N.J.S.12A:9-602 is amended to read as follows:

Waiver and variance of rights and duties.

12A:9-602. Waiver and Variance of Rights and Duties.

Except as otherwise provided in 12A:9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) 12A:9-207 (b) (4) (C), which deals with use and operation of the collateral by the secured party;
- (2) 12A:9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

- (3) 12A:9-607 (c), which deals with collection and enforcement of collateral;
- (4) 12A:9-608 (a), and 12A:9-615 (c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) 12A:9-608 (a) and 12A:9-615 (d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) 12A:9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) 12A:9-610 (b), 12A:9-611, 12A:9-613 and 12A:9-614, which deal with disposition of collateral;
- (8) 12A:9-615 (f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
- (9) 12A:9-616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) 12A:9-623, which deals with redemption of collateral;
- (12) 12A:9-624, which deals with permissible waivers; and
- (13) 12A:9-625 and 12A:9-626, which deal with the secured party's liability for failure to comply with this chapter.

93. N.J.S.12A:9-603 is amended to read as follows:

Agreement on standards concerning rights and duties.

12A:9-603. Agreement on Standards Concerning Rights and Duties.

(a) Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in 12A:9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. Subsection (a) does not apply to the duty under 12A:9-609 to refrain from breaching the peace.

94. N.J.S.12A:9-604 is amended to read as follows:

Procedure if security agreement covers real property or fixtures.

12A:9-604. Procedure If Security Agreement Covers Real Property or Fixtures.

(a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Enforcement: fixtures. Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property 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 secured party gives adequate assurance for the performance of the obligation to reimburse.

95. N.J.S.12A:9-605 is amended to read as follows:

Unknown debtor or secondary obligor.

12A:9-605. Unknown Debtor or Secondary Obligor.

A secured party does not owe a duty based on its status as secured party:

(1) to a person who is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

96. N.J.S.12A:9-607 is amended to read as follows:

Collection and enforcement by secured party.

12A:9-607. Collection and Enforcement by Secured Party.

(a) Collection and enforcement generally. If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under 12A:9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligation of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under 12A:9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under 12A:9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection (c), reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

97. N.J.S.12A:9-608 is amended to read as follows:

Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

12A:9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

(a) Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under 12A:9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1) (C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under 12A:9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

98. N.J.S.12A:9-609 is amended to read as follows:

Secured party's right to take possession after default.

12A:9-609. Secured Party's Right to Take Possession after Default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under 12A:9-610.

(b) Judicial and nonjudicial process. A secured party may proceed under subsection (a):

(1) pursuant to judicial process; or

(2) without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

99. N.J.S.12A:9-610 is amended to read as follows:

Disposition of collateral after default.

12A:9-610. Disposition of Collateral after Default.

(a) Disposition after default. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

100. N.J.S.12A:9-611 is amended to read as follows:

Notification before disposition of collateral.

12A:9-611. Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under 12A:9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 12A:9-311 (a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

101. N.J.S.12A:9-612 is amended to read as follows:

Timeliness of notification before disposition of collateral.

12A:9-612. Timeliness of Notification Before Disposition of Collateral.

(a) Reasonable time is question of fact. Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) 10-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

102. N.J.S.12A:9-613 is amended to read as follows:

Contents and form of notification before disposition of collateral: general.

12A:9-613. Contents and Form of Notification Before Disposition of Collateral: General.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in 12A:9-614 (3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) are not an addressee)

(For a public disposition:)

We will sell or lease or license, as applicable the (describe collateral) to the highest qualified bidder in public as follows:

Day and Date:

Time:

Place:

(For a private disposition:)

We will sell or lease or license, as applicable the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of \$ _____). You may request an accounting by calling us

at (telephone number)

(End of Form)

103. N.J.S.12A:9-614 is amended to read as follows:

Contents and form of notification before disposition of collateral: consumer-goods transaction.

12A:9-614. Contents and Form of Notification Before Disposition of Collateral: Consumer-goods Transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

- (A) the information specified in 12A:9-613 (1);
- (B) a description of any liability for a deficiency of the person to which the notification is sent;
- (C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under 12A:9-623 is available; and
- (D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identification of Transaction)

We have your (describe collateral), because you broke promises in our agreement.

(For a public disposition:)

We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

(For a private disposition:)

We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else. You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (telephone number).

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (telephone number) or write us at (secured party's address) and request a written explanation. We will charge

you \$ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

If you need more information about the sale call us at (telephone number) _____ or write us at (secured party's address) _____.

We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement: (Names of all other debtors and obligors, if any.)

(End of Form)

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this chapter.

(6) If a notification under this section is not in the form of paragraph (3), law other than this chapter determines the effect of including information not required by paragraph (1).

104. N.J.S.12A:9-615 is amended to read as follows:

Application of proceeds of disposition; liability for deficiency and right to surplus.

12A:9-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under 12A:9-610 in the following order:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a) (3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under 12A:9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a) (4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

- (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- (3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

105. N.J.S.12A:9-616 is amended to read as follows:

Explanation of calculation of surplus or deficiency.

12A:9-616. Explanation of Calculation of Surplus or Deficiency.

- (a) Definitions. In this section:
- (1) "Explanation" means a writing that:
- (A) states the amount of the surplus or deficiency;
- (B) provides an explanation, in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;
- (C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
- (D) provides a telephone number or mailing address from which additional information concerning the transaction is available.
- (2) "Request" means a record:
- (A) authenticated by a debtor or consumer obligor;
- (B) requesting that the recipient provide an explanation; and
- (C) sent after disposition of the collateral under 12A:9-610.
- (b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under 12A:9-615, the secured party shall:
- (1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:
- (A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
- (B) within 14 days after receipt of a request; or
- (2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.
- (c) Required information. To comply with subsection (a) (1) (B), a writing must provide the following information in the following order:
- (1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

(d) Substantial compliance. A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b) (1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

106. N.J.S.12A:9-617 is amended to read as follows:

Rights of transferee of collateral.

12A:9-617. Rights of Transferee of Collateral.

(a) Effects of disposition. A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.

(c) Rights of other transferee. If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

- (1) the debtor's rights in the collateral;
- (2) the security interest or agricultural lien under which the disposition is made; and
- (3) any other security interest or other lien.

107. N.J.S.12A:9-618 is amended to read as follows:

Rights and duties of certain secondary obligors.

12A:9-618. Rights and Duties of Certain Secondary Obligor.

(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- (3) is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. An assignment, transfer, or subrogation described in subsection (a):

- (1) is not a disposition of collateral under 12A:9-610; and
- (2) relieves the secured party of further duties under this chapter.

108. N.J.S.12A:9-619 is amended to read as follows:

Transfer of record or legal title.

12A:9-619. Transfer of Record or Legal Title.

(a) "Transfer statement." In this section, "transfer statement" means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;
- (2) promptly amend its records to reflect the transfer; and
- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

109. N.J.S.12A:9-620 is amended to read as follows:

Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

12A:9-620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

- (1) the debtor consents to the acceptance under subsection (c);
- (2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:
 - (A) a person to which the secured party was required to send a proposal under 12A:9-621; or
 - (B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
- (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
- (4) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to 12A:9-624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

- (1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
- (2) the conditions of subsection (a) are met.
- (c) Debtor's consent. For purposes of this section:
 - (1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
 - (2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
 - (A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
 - (B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
 - (C) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.
 - (d) Effectiveness of notification. To be effective under subsection (a) (2), a notification of objection must be received by the secured party:
 - (1) in the case of a person to which the proposal was sent pursuant to 12A:9-621, within 20 days after notification was sent to that person; and
 - (2) in other cases:
 - (A) within 20 days after the last notification was sent pursuant to 12A:9-621; or
 - (B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).
 - (e) Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to 12A:9-610 within the time specified in subsection (f) if:
 - (1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
 - (2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.
 - (f) Compliance with mandatory disposition requirement. To comply with subsection (e), the secured party shall dispose of the collateral:
 - (1) within 90 days after taking possession; or
 - (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

110. N.J.S.12A:9-621 is amended to read as follows:

Notification of proposal to accept collateral.

12A:9-621. Notification of Proposal to Accept Collateral.

(a) Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 12A:9-311 (a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

111. N.J.S.12A:9-622 is amended to read as follows:

Effect of acceptance of collateral.

12A:9-622. Effect of Acceptance of Collateral.

(a) Effect of acceptance. A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of a debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this chapter.

112. N.J.S.12A:9-623 is amended to read as follows:

Right to redeem collateral.

12A:9-623. Right to Redeem Collateral.

(a) Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in 12A:9-615

(a) (1).

(c) When redemption may occur. A redemption may occur at any time before a secured party:

(1) has collected collateral under 12A:9-607;

(2) has disposed of collateral or entered into a contract for its disposition under 12A:9-610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under 12A:9-622.

113. N.J.S.12A:9-624 is amended to read as follows:

Waiver.

12A:9-624. Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under 12A:9-611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under 12A:9-620 (e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under 12A:9-623 only by an agreement to that effect entered into and authenticated after default.

114. N.J.S.12A:9-625 is amended to read as follows:

Remedies for secured party's failure to comply with chapter.

12A:9-625. Remedies for Secured Party's Failure to Comply with Chapter.

(a) Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. Subject to subsections (c), (d) and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. Except as otherwise provided in 12A:9-628:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under 12A:9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 12A:9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: noncompliance with specified provisions. In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) fails to comply with 12A:9-207;

(2) fails to comply with 12A:9-208;

(3) files a record that the person is not entitled to file under 12A:9-509

(a);

(4) fails to cause the secured party of record to file or send a termination statement as required by 12A:9-513 (a) or (c);

(5) fails to comply with 12A:9-616 (b) (1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with 12A:9-616 (b) (2).

(f) Statutory damages: noncompliance with 12A:9-210. A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under 12A:9-210. A recipient of a request under 12A:9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with 12A:9-210. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 12A:9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

115. N.J.S.12A:9-626 is amended to read as follows:

Action in which deficiency or surplus is in issue.

12A:9-626. Action in Which Deficiency or Surplus Is in Issue.

(a) Applicable rules if amount of deficiency or surplus in issue. In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in 12A:9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3) (B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation,

expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under 12A:9-615 (f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

116. N.J.S.12A:9-627 is amended to read as follows:

Determination of whether conduct was commercially reasonable.

12A:9-627. Determination of Whether Conduct Was Commercially Reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) in the usual manner on any recognized market;
- (2) at the price current in any recognized market at the time of the disposition; or
- (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) in a judicial proceeding;
 - (2) by a bona fide creditors' committee;
 - (3) by a representative of creditors; or
 - (4) by an assignee for the benefit of creditors.
- (d) Approval under subsection (c) not necessary; absence of approval has no effect. Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

117. N.J.S.12A:9-628 is amended to read as follows:

Nonliability and limitation on liability of secured party; liability of secondary obligor.

12A:9-628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with chapter. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(2) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. A secured party is not liable because of its status as secured party:

(1) to a person who is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under 12A:9-625 (c) (2) for its failure to comply with 12A:9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under 12A:9-625 (c) (2) more than once with respect to any one secured obligation.

118. N.J.S.12A:9-701 is amended to read as follows:

Effective date.

12A:9-701. Effective Date.

This chapter shall take effect on July 1, 2001. References in this part to "this chapter" are to Chapter 9 of the Uniform Commercial Code as enacted by P.L.2001, c.117 and P.L.2001, c.386. References in this part to "former Chapter 9" are to Chapter 9 of the Uniform Commercial Code (12A:9-101 et seq.) as in effect before July 1, 2001.

119. N.J.S.12A:9-702 is amended to read as follows:

Savings clause.

12A:9-702. Savings Clause.

(a) Pre-effective-date transactions or liens. Except as otherwise provided in this part, this chapter applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this chapter takes effect.

(b) Continuing validity. Except as otherwise provided in subsection (c) and 12A:9-703 through 12A:9-709:

(1) transactions and liens that were not governed by former Chapter 9, were validly entered into or created before this chapter takes effect, and would be subject to this chapter if they had been entered into or created after this chapter takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this chapter takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this chapter or by the law that otherwise would apply if this chapter had not taken effect.

(c) Pre-effective-date proceedings. This chapter does not affect an action, case, or proceeding commenced before this chapter takes effect.

120. N.J.S.12A:9-703 is amended to read as follows:

Security interest perfected before effective date.

12A:9-703. Security Interest Perfected Before Effective Date.

(a) Continuing priority over lien creditor: perfection requirements satisfied. A security interest that is enforceable immediately before this chapter takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this chapter if, when this chapter takes effect, the applicable requirements for enforceability and perfection under this chapter are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. Except as otherwise provided in 12A:9-705, if, immediately before this chapter takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this chapter are not satisfied when this chapter takes effect, the security interest:

(1) is a perfected security interest for one year after this chapter takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable under 12A:9-203 before the year expires; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this chapter are satisfied before the year expires.

121. N.J.S.12A:9-704 is amended to read as follows:

Security interest unperfected before effective date.

12A:9-704. Security Interest Unperfected Before Effective Date.

A security interest that is enforceable immediately before this chapter takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest for one year after this chapter takes effect;

(2) remains enforceable thereafter if the security interest becomes enforceable under 12A:9-203 when this chapter takes effect or within one year thereafter; and

(3) becomes perfected:

(A) without further action, when this chapter takes effect if the applicable requirements for perfection under this chapter are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

122. N.J.S.12A:9-705 is amended to read as follows:

Effectiveness of action taken before effective date.

12A:9-705. Effectiveness of Action Taken Before Effective Date.

(a) Pre-effective-date action; one-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this chapter takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this chapter takes effect, the action is effective to perfect a security interest that attaches

under this chapter within one year after this chapter takes effect. An attached security interest becomes unperfected one year after this chapter takes effect unless the security interest becomes a perfected security interest under this chapter before the expiration of that period.

(b) Pre-effective-date filing. The filing of a financing statement before this chapter takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. This chapter does not render ineffective an effective financing statement that, before this chapter takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 12A:9-103. However, except as otherwise provided in subsections (d) and (e) and 12A:9-706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) Continuation statement. The filing of a continuation statement after this chapter takes effect does not continue the effectiveness of the financing statement filed before this chapter takes effect. However, upon the timely filing of a continuation statement after this chapter takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this chapter takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c) (2) to transmitting utility financing statement. Subsection (c) (2) of this section applies to a financing statement that, before this chapter takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 12A:9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Part 5. A financing statement that includes a financing statement filed before this chapter takes effect and a continuation statement filed after this chapter takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

123. N.J.S.12A:9-706 is amended to read as follows:

When initial financing statement suffices to continue effectiveness of financing statement.

12A:9-706. When Initial Financing Statement Suffices to Continue Effectiveness of Financing Statement.

(a) Initial financing statement in lieu of continuation statement. The filing of an initial financing statement in the office specified in 12A:9-501 continues the effectiveness of a financing statement filed before this chapter takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter;

(2) the pre-effective-date financing statement was filed in an office in another state or another office in this State; and

(3) the initial financing statement satisfies subsection (c).

(b) Period of continued effectiveness. The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this chapter takes effect, for the period provided in former 12A:9-403 with respect to a financing statement; and

(2) if the initial financing statement is filed after this chapter takes effect, for the period provided in 12A:9-515 with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). To be effective for purposes of subsection (a), an initial financing statement shall:

(1) satisfy the requirements of Part 5 for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

124. N.J.S.12A:9-707 is amended to read as follows:

Persons entitled to file initial financing statement or continuation statement.

12A:9-708. Persons Entitled to File Initial Financing Statement or Continuation Statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

- (A) to continue the effectiveness of a financing statement filed before this chapter takes effect; or
- (B) to perfect or continue the perfection of a security interest.

125. Title 12A, chapter 9 is supplemented as follows:

Amendment of pre-effective-date financing statement.

12A:9-707. Amendment of Pre-effective-date Financing Statement.

(a) "Pre-effective-date financing statement". In this section, "pre-effective-date financing statement" means a financing statement filed before this chapter takes effect.

(b) Applicable law. After this chapter takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this chapter takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in 12A:9-501;

(2) an amendment is filed in the office specified in 12A:9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies 12A:9-706(c); or

(3) an initial financing statement that provides the information as amended and satisfies 12A:9-706(c) is filed in the office specified in 12A:9-501.

(d) Method of amending: continuation. If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under 12A:9-705(d) and (f) or 12A:9-706.

(e) Method of amending: additional termination rule. Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this chapter takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies 12A:9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing

statement. The preceding sentence applies only to the office described in 12A:9-501(a)(2).

126. N.J.S.12A:9-708 is amended to read as follows:

Priority.

12A:9-709 Priority.

(a) Law governing priority. This chapter determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this chapter takes effect, former Chapter 9 determines priority.

(b) Priority if security interest becomes enforceable under 12A:9-203. For purposes of 12A:9-322 (a), the priority of a security interest that becomes enforceable under 12A:9-203 of this chapter dates from the time this chapter takes effect if the security interest is perfected under this chapter by the filing of a financing statement before this chapter takes effect which would not have been effective to perfect the security interest under former Chapter 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

127. Title 12A, chapter 9 is supplemented as follows:

Retroactivity provision.

12A:9-710. Retroactivity Provision.

This act, P.L.2001, c.386, amends and supplements P.L.2001, c.117 and shall take effect immediately and shall be applied retroactively to July 1, 2001.

If, on or after July 1, 2001 and prior to the effective date of this act, action required for the attachment, perfection or priority of a security interest under Post-Amendment Chapter 9 was taken, but was not heretofore effective, such action shall be effective when taken.

If, on or after July 1, 2001 and prior to the effective date of this act, action required for the attachment, perfection or priority of a security interest under Pre-Amendment Chapter 9 was taken and was heretofore effective, but is not effective under Post-Amendment Chapter 9, such action shall be deemed effective when taken if, within 60 days after the effective date of this act, any other action required under Post-Amendment Chapter 9 for such attachment, perfection or priority is taken, except to the extent that, after the effective date of this act and before the time such other required action is taken, a purchaser has given value in reasonable reliance upon such other required action not having been taken.

As used in this section, "Pre-Amendment Chapter 9" means Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117 (12A:9-101

through 12A:9-708) as constituted before giving effect to this act, and "Post-Amendment Chapter 9" means Chapter 9 of Title 12A of the New Jersey Statutes (12A:9-101 through 12A:9-709) as amended and supplemented by this act.

128. Title 12A, chapter 1 is supplemented as follows:

Section captions.

12A:1-109. Section Captions.

Section captions are part of the Uniform Commercial Code. The subsection headings in Chapter 9 on Secured Transactions (12A:9-101 et seq.) are not parts of that chapter or of the Uniform Commercial Code.

129. 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 the Uniform Commercial Code which are applicable to specific chapters or subchapters thereof, and unless the context otherwise requires, in the Uniform Commercial Code:

(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 the Uniform Commercial Code (12A:1-205, 2-208 and 2A-207). Whether an agreement has legal consequences is determined by the provisions in the Uniform Commercial Code, 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 that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or cause 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 the Uniform Commercial Code 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 the Uniform Commercial Code 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," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(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 and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(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 the Uniform Commercial Code.

(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 the Uniform Commercial Code.

(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, security interest, 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 term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that 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. Except as otherwise provided in 12A:2-505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Chapter 9. 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." 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:4-210 and 12A:4-211), 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.

130. N.J.S.12A:1-206 is amended to read as follows:

Statute of frauds for kinds of personal property not otherwise covered.

12A:1-206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

(1) Except in the cases described in subsection (2) a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) does not apply to contracts for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor to security agreements (12A:9-203).

131. N.J.S.12A:2A-103 is amended to read as follows:

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: 9-102(a)(2).
"Between merchants"	12A:2-104(3).
"Buyer"	12A:2-103(1)(a).
"Chattel paper"	12A:9-102(a)(12).
"Consumer goods"	12A:9-102(a)(24).
"Document"	12A:9-102(a)(31).
"Entrusting"	12A:2-403(3).
"General intangible"	12A:9-102(a)(42).
"Good faith"	2A:2-103(1)(b).
"Instrument"	12A:9-102(a)(47).
"Merchant"	12A:2-104(1).
"Mortgage"	12A:9-102(a)(55).
"Pursuant to commitment"	12A:9-102(a)(68).
"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.

132. N.J.S.12A:2A-307 is amended to read as follows:

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 subsection (3) and in 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in 12A:9-317, 12A:9-321 and 12A:9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

133. N.J.S.12A:8-103 is amended to read as follows:

Rule for determining whether certain obligations and interests are securities or financial assets.

12A:8-103. Rule for Determining whether Certain Obligations and Interests are Securities or Financial Assets.

a. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

b. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

c. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

d. A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

e. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

f. A commodity contract, as defined in 12A:9-102 (a) (15), is not a security or a financial asset.

134. N.J.S.12A:8-110 is amended to read as follows:

Applicability; choice of law.

12A:8-110. Applicability; Choice of Law.

a. The local law of the issuer's jurisdiction, as specified in subsection d. of this section, governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

b. The local law of the securities intermediary's jurisdiction, as specified in subsection e. of this section, governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

c. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

d. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) through (5) of subsection a. of this section.

e. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this chapter, or the Uniform Commercial Code, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection e. applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

f. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

135. N.J.S.12A:8-510 is amended to read as follows:

Rights of purchaser of security entitlement from entitlement holder.

12A:8-510. Rights of Purchaser of Security Entitlement from Entitlement Holder.

a. In a case not covered by the priority rules in Chapter 9 or the rules stated in subsection c. of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

b. If an adverse claim could not have been asserted against an entitlement holder under 12A:8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

c. In a case not covered by the priority rules in Chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection d of this section, purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under 12A:8-106d. (1);

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under 12A:8-106d. (2); or

(3) if the purchaser obtained control through another person under 12A:8-106 d. (3), the time on which priority would be based under this subsection if the other person were the secured party.

d. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to read as follows:

Bondable transition property constitutes an account.

27. a. For purposes of this act, and the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable transition property, as defined in N.J.S.12A:9-102 (a) (8.1), shall constitute an account. For purposes of this act, and the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable transition property shall be in existence whether or not the revenues or proceeds in respect thereof have accrued, in accordance with subsection c. of section 22 of this act. The validity, perfection or priority of any security interest in bondable transition property shall not be defeated or adversely affected by changes to the bondable stranded costs rate order or to the transition bond charges payable by any customer. Any description of bondable transition property in a security agreement or other agreement or a financing statement shall be sufficient if it refers to the bondable stranded costs rate order establishing the bondable transition property.

b. In addition to the other rights and remedies provided or authorized by this act, and by the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in default under a security agreement and the collateral is bondable transition property, then upon application by the secured party, the board or any court of competent jurisdiction shall order the sequestration and payment to the secured party of all collections and other proceeds of such bondable transition property up to the value of the property. In the event of any conflicts, priority among pledgees, transferees or secured parties shall be determined under N.J.S.12A:9-101 et seq. The secured party shall account to the debtor for any surplus and, unless otherwise agreed, the debtor shall be liable for any deficiency.

137. N.J.S.2A:25-1 is amended to read as follows:

Contracts and judgments assignable; action by assignee; defenses.

2A:25-1. All contracts for the sale and conveyance of real estate, all judgments and decrees recovered in any of the courts of this State or of the United States or in any of the courts of any other state of the United States and all choses in action arising on contract shall be assignable, and the assignee may sue thereon in his own name. In such an action, the person sued shall be allowed, not only all set-offs, discounts and defenses he has against the assignee, but also all set-offs, discounts and defenses he had against the assignor before notice of such assignment was given to him. The assignment of a sealed instrument by writing not under seal shall be as valid as if under seal.

The assignee for a valuable consideration of any chose in action may, although the assignor is dead, sue for and recover the same in his own name. The person sued in any such action shall be allowed not only all set-offs, discounts and defenses he has against the assignee, but also all set-offs, discounts and defenses he had against the assignor or his representatives before notice of such assignment was given to him.

Security interests in commercial tort claims may be created, attached, perfected and enforced in accordance with Chapter 9 of Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

138. This act shall take effect immediately, and shall have retroactive effect in accordance with section 127 of this act.

Approved January 8, 2002.

CHAPTER 387

AN ACT concerning certain commissions and boards in regard to the conversion of a health service corporation to a domestic stock insurer and amending P.L.2001, c.131.

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

1. Section 20 of P.L.2001, c.131 (C.17:48E-68) is amended to read as follows:

C.17:48E-68 Health Service Corporation Conversion Temporary Advisory Commission; board of directors of foundation.

20. a. There is established in, but not of, the Department of the Treasury a Health Service Corporation Conversion Temporary Advisory Commission. The advisory commission shall consist of 15 members. Seven members shall be appointed by the Governor, including two public members, one physician licensed to practice medicine in New Jersey, one licensed health care provider other than a physician, one representative of the dental community, one representative of a community based organization that provides or assists in providing health care or health care services to New Jersey residents and one representative of the AFL-CIO. Three members shall be appointed by the President of the Senate, including one public member, one representative of the hospital community and one physician licensed to practice medicine in New Jersey. One public member shall be appointed by the Minority Leader of the Senate. Three members shall be appointed by the Speaker of the General Assembly, including one public member, one representative of the hospital community and one representative of a community based organization that provides or assists in providing health care or health care services to New Jersey residents. One public member shall be appointed by the Minority Leader of the General Assembly. A vacancy in the membership of the advisory commission shall be filled in the same manner provided for the original appointment. Members shall serve without fee or compensation. The advisory commission shall commence its activities upon appointment of at least a majority of its initial members.

The advisory commission shall, in anticipation of a conversion of a health service corporation as authorized under this act, examine issues related to access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of New Jerseyans, and may review experiences in other states related to the

establishment of foundations in connection with the conversion of non-profit health insurers similar to health care service corporations licensed to do business in New Jersey. The advisory commission shall advise the Attorney General and Commissioner of Banking and Insurance as to its findings on these issues. The Department of the Treasury shall provide the advisory commission with such assistance as the advisory commission may require in order to perform its duties under this act. The advisory commission may engage the services of advisors and consultants in order to assist in the performance of its duties under this act.

b. Upon the creation of a foundation pursuant to section 19 of P.L.2001, c.131 (C.17:48E-67) and the approval of the foundation by a court of competent jurisdiction, the advisory commission created pursuant to subsection a. of this section shall be dissolved. The foundation shall have a board of directors consisting of 15 members. Seven members shall be appointed by the Governor, including two public members, one physician licensed to practice medicine in New Jersey, one licensed health care provider other than a physician, one representative of the dental community, one representative of a community based organization that provides or assists in providing health care or health care services to New Jersey residents and one representative of the AFL-CIO. Three members shall be appointed by the President of the Senate, including one public member, one representative of the hospital community and one physician licensed to practice medicine in New Jersey. One public member shall be appointed by the Minority Leader of the Senate. Three members shall be appointed by the Speaker of the General Assembly, including one public member, one representative of the hospital community and one representative of a community based organization that provides or assists in providing health care or health care services to New Jersey residents. One public member shall be appointed by the Minority Leader of the General Assembly. Initially, the members of the advisory commission shall constitute the board of the foundation, and shall serve for a term of three years. Thereafter, the members of the board of the foundation shall be appointed for a term of three years. Each member shall hold office until reappointed or a successor is appointed and qualified. A vacancy in the membership of the board shall be filled for an unexpired term in the same manner provided for the original appointment. Members shall serve without fee or compensation. The foundation shall commence its activities upon the appointment of at least a majority of its initial board of directors. In the event more than one foundation is established pursuant to this act, the board of directors of any such additional foundations shall be appointed in compliance with the requirements of this subsection.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 388

AN ACT concerning pawnbrokers and amending R.S.45:22-10, R.S.45:22-22, R.S.45:22-25, R.S.45:22-26, R.S.45:22-27 and R.S.45:22-31.

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

1. R.S.45:22-10 is amended to read as follows:

Annual investigation by commissioner; other investigations.

45:22-10. The Commissioner of Banking and Insurance may at any time, and shall at least once each year, investigate the business of all licensees, either personally or by any person designated by him, and for the purpose of effectuating this article the Commissioner of Banking and Insurance or the person so designated shall have free access, during the usual business hours, to the licensee's place of business, to the books, papers, records, safes and vaults of the licensee wherever located, and shall also have the authority to examine, under oath, any person whose testimony he may require relative to such business. The cost and charges of any such examination or investigation shall be borne by the licensee. Absent a determination by the commissioner that good cause exists, the cost of the examination shall not exceed \$2,500. The examination shall be conducted in accordance with generally accepted examination procedures and pursuant to established and objective criteria developed by the commissioner. The department shall issue to the licensee an itemized invoice setting forth the number of hours and the work performed in connection with the examination.

2. R.S.45:22-22 is amended to read as follows:

Interest chargeable; exceptions.

45:22-22. Notwithstanding the provisions of N.J.S.2C:21-19 to the contrary, a pawnbroker shall not charge or receive interest on a loan in excess of 3.7% per month or a fraction thereof, except that he may charge \$1.00 where the interest herein amounts to less. In no event shall any other charges be made for any reason whatsoever, except as permitted by the Commissioner of Banking and Insurance.

3. R.S.45:22-25 is amended to read as follows:

Period of redemption; sale of unredeemed pledges.

45:22-25. All unredeemed pledges shall be sold at public auction or private sale, but not before the expiration of twelve months from the date of the loan, unless otherwise agreed in writing between the pawnbroker and the pledgor, or authorized by the Commissioner of Banking and Insurance for due cause shown.

4. R.S.45:22-26 is amended to read as follows:

Sale by auction or private sale; notice of proposed sale.

45:22-26. All unredeemed pledges shall be sold at public auction or private sale, but not before a notice in writing shall have first been mailed subsequent to the date of maturity of the loan, to the last known address of the pledgor and at least twenty days prior to the date of such public or private sale.

5. R.S.45:22-27 is amended to read as follows:

Disposition of proceeds, surplus.

45:22-27. The proceeds of such sale by public auction or private sale shall be applied for the purposes and in the order here specified; auctioneer's charges, if any; principal and interest of the loan; and a proportionate share of the expense of publishing any notice of the sale, as well as a proportionate share of other specified written or printed notice sent by mail, determined by dividing the total expense of such inclusive notice by the number of loans sold. The surplus, if any, shall be paid, upon proof of identification, to the pledgor or anyone else who would have been entitled to redeem the pledge if it had not been sold. Notice of such surplus, if any, shall be mailed to the last known address of the pledgor, within thirty days after the sale.

6. R.S.45:22-31 is amended to read as follows:

Pawnbroker not to accept pledge from persons under 16.

45:22-31. A pawnbroker shall not:

- a. Accept a pledge from any person who is under the age of sixteen years.
- b. (Deleted by amendment, P.L.2001, c.388.)

7. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 389

AN ACT canceling a portion of a prior appropriation from the "1995 New Jersey Coastal Blue Acres Trust Fund" established pursuant to the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, and appropriating \$992,000, reappropriating \$94,158, and authorizing the use of certain interest earnings and loan repayments from that fund to assist local government units to acquire certain lands in the coastal area for recreation and conservation purposes.

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

1. a. Of the \$300,000 appropriated to the Department of Environmental Protection pursuant to P.L.1997, c.251 for the purpose of providing a loan or grant, or both, to assist Long Beach Township, Ocean County, to acquire lands for recreation and conservation purposes, the sum of \$94,158 is canceled and shall be returned to the "1995 New Jersey Coastal Blue Acres Trust Fund" established pursuant to section 27 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204.

b. There is appropriated the sum of \$992,000 and reappropriated the sum of \$94,158 from the "1995 New Jersey Coastal Blue Acres Trust Fund" to the Department of Environmental Protection to provide loans or grants, or both, to assist local government units to acquire, for recreation and conservation purposes, unimproved or largely unimproved lands in the coastal area that may be prone to incurring damage caused by storms or storm-related flooding, or that may buffer or protect other lands from such damage, in accordance with the list of projects approved as eligible for such funding pursuant to section 3 of this act, and which sum shall include administrative costs.

2. There is appropriated to the Department of Environmental Protection such sums as may be or become available on or before June 30, 2002, due to interest earnings or loan repayments, in the "1995 New Jersey Coastal Blue Acres Trust Fund," for the purpose of making additional loans or grants, or both, to local government units for the projects listed in section 3 of this act and section 5 of P.L.1997, c.251, and for the purpose of administrative costs associated with any such projects.

3. a. The following projects are eligible for funding with the moneys appropriated or reappropriated pursuant to sections 1 and 2 of this act:

Local Government Unit	County	Project	Approved Amount
Middletown Twp	Monmouth	Leonardo Open Space Acq	\$ 160,000
Oceanport Boro	Monmouth	Horseneck Point Acq	\$ 60,000
Union Beach Boro	Monmouth	Waterfront Acq	\$ 12,000
Seaside Heights Boro	Ocean	Beachfront Acq	\$ 854,158
TOTAL			\$1,086,158

b. Any transfer of funds, change in project sponsor, or change in project site or type listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, those projects, and the projects listed in section 5 of P.L.1997, c.251, shall be eligible for additional funding, including administrative costs, utilizing those remaining moneys, in a sequence consistent with the priority system established by the Department of Environmental Protection, and with the approval of the Joint Budget Oversight Committee or its successor.

4. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 390

AN ACT appropriating and reappropriating certain moneys from various Green Acres bond acts to assist local government units to acquire or develop lands for recreation and conservation purposes.

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

1. a. There is appropriated to the Department of Environmental Protection such sums as may be, or may become available, on or before

June 30, 2002, due to interest earnings or loan repayments in any "Green Trust Fund" established pursuant to a Green Acres bond act, for the purpose of providing:

(1) grants or loans, or both, to assist local government units to acquire or develop lands for recreation and conservation purposes, for projects approved as eligible for such funding pursuant to section 2 of this act; and

(2) additional funding, as determined by the Department of Environmental Protection, to any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes or that receives funding approved pursuant to section 2 of this act or section 3 of P.L.2001, c.389, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

b. There is reappropriated to the Department of Environmental Protection the unexpended balances, due to project withdrawals, cancellations, or cost savings, of the amounts appropriated or reappropriated from any Green Acres bond act to assist local government units to acquire or develop lands for recreation and conservation purposes, for the purposes of providing:

(1) grants or loans, or both, to assist local government units to acquire or develop lands for recreation and conservation purposes, for projects approved as eligible for such funding pursuant to section 2 of this act; and

(2) additional funding, as determined by the Department of Environmental Protection, to any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes or that receives funding approved pursuant to section 2 of this act or section 3 of P.L.2001, c.389, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

c. For the purposes of this section:

"Garden State Green Acres Preservation Trust Fund" means the fund established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19); and

"Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, P.L.1983, c.354, and P.L.1978, c.118.

2. a. The following projects to acquire or develop lands for recreation and conservation purposes are eligible for funding with moneys appropriated or reappropriated pursuant to section 1 of this act:

(1) Planning Incentive Program:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
North Hanover Twp	Burlington	Open Space Acq	\$ 550,000
Washington Twp	Gloucester	Open Space & Recreation Project Acq	750,000
Marlboro Twp	Monmouth	Marlboro Open Space Acq	750,000
Denville Twp	Morris	Denville Open Space Acq	750,000
Dover Twp	Ocean	Open Space & Recreation Plan Acq	750,000
Blairstown Twp	Warren	Blairstown Twp Planning Incentive Acq	750,000
Hardwick Twp	Warren	Hardwick Twp Open Space Acq	290,000
Mansfield Twp	Warren	Mansfield Twp Open Space Acq	750,000

(2) Standard Acquisition Program:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Linwood City	Atlantic	South Jersey Industries Property Acq	\$ 240,000
Edgewater Boro	Bergen	Grand Cove Marina Acq	500,000
Middle Twp	Cape May	Park Acq	226,000
Rumson Boro	Monmouth	Rumson Boro Acq	500,000
Berkeley Twp	Ocean	Good Luck Point Acq	240,000
Stafford Twp	Ocean	Nautilus Park Acq	126,000
Washington Boro	Warren	Railroad Avenue Acq	500,000

(3) Urban Aid Communities Program:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Gloucester Twp	Camden	Open Space Acq	\$1,000,000
Old Bridge Twp	Middlesex	Cedar Ridge II Acq	1,000,000

Long Branch City	Monmouth	Manahasset Creek Acq	1,000,000
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(4) State Share of Federal Urban Parks and Recreation Recovery Program:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Vineland City	Cumberland	Multi Parks Dev	\$ 58,800
Perth Amboy City	Middlesex	Caledonia/ Roessler Park Dev	49,500
Passaic City	Passaic	Benson Tennis Court Rehabilitation	14,400
Elizabeth City	Union	Basketball Court Rehabilitation	21,000
TOTAL ALL CATEGORIES			\$10,815,700

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. (1) To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to section 3 of P.L.2001, c.389, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

(2) For the purposes of this subsection:

"Garden State Green Acres Preservation Trust Fund" means the fund established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19); and

"Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, P.L.1983, c.354, and P.L.1978, c.118.

3. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 391

AN ACT concerning driver's licenses and identification cards, amending the title and body of P.L.1999, c.28, amending various parts of the statutory law, supplementing chapter 3 of Title 39 of the Revised Statutes and making an appropriation.

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

1. The title of P.L.1999, c.28 is amended to read as follows:

Title amended.

AN ACT concerning four year driver's licenses, amending various parts of the statutory law, supplementing chapter 3 of Title 39 of the Revised Statutes, and repealing various parts of the statutory law.

2. R.S.39:3-10 is amended to read as follows:

Licensing of drivers; classifications.

39:3-10. No person shall drive a motor vehicle on a public highway in this State unless in possession of a validated permit, or a provisional or basic driver's license issued to him in accordance with this article.

No person under 18 years of age shall be issued a basic license to drive motor vehicles, nor shall a person be issued a validated permit, including a validated examination permit, until he has passed a satisfactory examination and other requirements as to his ability as an operator. The examination shall include a test of the applicant's vision, his ability to understand traffic control devices, his knowledge of safe driving practices and of the effects that ingestion of alcohol or drugs has on a person's ability to operate a motor vehicle, his knowledge of such portions of the mechanism of motor vehicles as is necessary to insure the safe operation of a vehicle of the kind or kinds indicated by the applicant and of the laws and ordinary usages of the road. No person shall sit for an examination for any permit without exhibiting photo identification deemed acceptable by the director, unless that person is a high school student participating in a course of driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State, pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1). A road test shall be required for a provisional license and serve as a demonstration of the applicant's ability to operate a vehicle of the class designated. No person shall sit for a road test unless that person exhibits photo identification deemed acceptable by the director. A high school student who has completed a course of behind-the-wheel automobile

driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State, who has been issued a special learner's permit pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1) prior to January 1, 2003, shall not be required to exhibit photo identification in order to sit for a road test. The road test shall be given on public streets, where practicable and feasible, but may be preceded by an off-street screening process to assess basic skills. The director shall approve locations for the road test which pose no more than a minimal risk of injury to the applicant, the examiner and other motorists. No new locations for the road test shall be approved unless the test can be given on public streets.

The director shall issue a basic driver's license to operate a motor vehicle other than a motorcycle to a person over 18 years of age who previously has not been licensed to drive a motor vehicle in this State or another jurisdiction only if that person has: (1) operated a passenger automobile in compliance with the requirements of this title for not less than one year, not including any period of suspension or postponement, either from the date of issuance of an examination permit pursuant to R.S.39:3-13 or a provisional license pursuant to section 4 of P.L.1950, c.127 (C.39:3-13.4); (2) not been assessed more than two motor vehicle points and has not been convicted in the previous year for a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1; or any other motor vehicle-related violation the director determines to be significant and applicable pursuant to regulation; and (3) passed an examination of his ability to operate a motor vehicle pursuant to this section.

The director shall expand the driver's license examination by 20%. The additional questions to be added shall consist solely of questions developed in conjunction with the State Department of Health and Senior Services concerning the use of alcohol or drugs as related to highway safety. The director shall develop in conjunction with the State Department of Health and Senior Services supplements to the driver's manual which shall include information necessary to answer any question on the driver's license examination concerning alcohol or drugs as related to highway safety.

Up to 20 questions may be added to the examination on subjects to be determined by the director that are of particular relevance to youthful drivers, after consultation with the Director of the Office of Highway Traffic Safety.

The director shall expand the driver's license examination to include a question asking whether the applicant is aware of the provisions of the "Uniform Anatomical Gift Act," P.L.1969, c.161 (C.26:6-57 et seq.) and the procedure for indicating on the driver's license the intention to make a

donation of body organs or tissues pursuant to P.L.1978, c.181 (C.39:3-12.2).

Any person applying for a driver's license to operate a motor vehicle or motorized bicycle in this State shall surrender to the director any current driver's license issued to him by another state or jurisdiction upon his receipt of a driver's license for this State. The director shall refuse to issue a driver's license if the applicant fails to comply with this provision. An applicant for a permit or license who is less than 18 years of age, and who holds a permit or license for a passenger automobile issued by another state or country that is valid or has expired within a time period designated by the director, shall be subject to the permit and license requirements and penalties applicable to State permit and license applicants who are of the same age; except that if the other state or country has permit or license standards substantially similar to those of this State, the credentials of the other state or country shall be acceptable.

The director shall create classified licensing of drivers covering the following classifications:

a. Motorcycles, except that for the purposes of this section, motorcycle shall not include any three-wheeled motor vehicle equipped with a single cab with glazing enclosing the occupant, seats similar to those of a passenger vehicle or truck, seat belts and automotive steering;

b. Omnibuses as classified by R.S.39:3-10.1 and school buses classified under N.J.S.18A:39-1 et seq.;

c. (Deleted by amendment, P.L.1999, c.28).

d. All motor vehicles not included in classifications a. and b. A license issued pursuant to this classification d. shall be referred to as the "basic driver's license."

Every applicant for a license under classification b. shall be a holder of a basic driver's license. Any issuance of a license under classification b. shall be by endorsement on the basic driver's license.

A driver's license for motorcycles may be issued separately, but if issued to the holder of a basic driver's license, it shall be by endorsement on the basic driver's license.

The director, upon payment of the lawful fee and after he or a person authorized by him has examined the applicant and is satisfied of the applicant's ability as an operator, may, in his discretion, issue a license to the applicant to drive a motor vehicle. The license shall authorize him to drive any registered vehicle, of the kind or kinds indicated, and shall expire, except as otherwise provided, on the last day of the 48th calendar month following the calendar month in which such license was issued.

The director may, at his discretion and for good cause shown, issue licenses which shall expire on a date fixed by him. If the director issues a

license to a person who has demonstrated authorization to be present in the United States for a period of time shorter than the standard period of the license, the director shall fix the expiration date of the license at a date based on the period in which the person is authorized to be present in the United States under federal immigration laws. The director may renew such a license only if it is demonstrated that the person's continued presence in the United States is authorized under federal law. The fee for licenses with expiration dates fixed by the director shall be fixed by the director in amounts proportionately less or greater than the fee herein established. The required fee for a license for the 48-month period shall be as follows:

Motorcycle license or endorsement	\$18
Omnibus or school bus endorsement	\$18
Basic driver's license	\$18

The director shall waive the payment of fees for issuance of omnibus endorsements whenever an applicant establishes to the director's satisfaction that said applicant will use the omnibus endorsement exclusively for operating omnibuses owned by a nonprofit organization duly incorporated under Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes.

The director shall issue licenses for the following license period on and after the first day of the calendar month immediately preceding the commencement of such period, such licenses to be effective immediately.

All applications for renewals of licenses shall be made in a manner prescribed by the director and in accordance with procedures established by him.

The director in his discretion may refuse to grant a permit or license to drive motor vehicles to a person who is, in his estimation, not a proper person to be granted such a permit or license, but no defect of the applicant shall debar him from receiving a permit or license unless it can be shown by tests approved by the Director of the Division of Motor Vehicles that the defect incapacitates him from safely operating a motor vehicle.

In addition to requiring an applicant for a driver's license to submit satisfactory proof of identity and age, the director also shall require the applicant to provide, as a condition for obtaining a permit and license, satisfactory proof that the applicant's presence in the United States is authorized under federal law.

If the director has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the director shall refuse to grant the permit or license until such time as the document may be verified by the issuing agency to the director's satisfaction.

A person violating this section shall be subject to a fine not exceeding \$500 or imprisonment in the county jail for not more than 60 days, but if that person has never been licensed to drive in this State or any other jurisdiction, he 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 motor vehicle to the person for a period of not less than 180 days. The penalties provided for by this paragraph 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.

Nothing in this section shall be construed to alter or extend the expiration of any license issued prior to the date this amendatory and supplementary act becomes operative.

3. Section 1 of P.L.1979, c.261 (C.39:3-10f) is amended to read as follows:

C.39:3-10f Initial license, renewal, digitized color picture of licensee required; exceptions.

1. In addition to the requirements for the form and content of a motor vehicle driver's license under R.S.39:3-10, on and after the operative date of P.L.2001, c.391 (C.39:3-10f4 et al.), each initial New Jersey license and each renewal of a New Jersey driver's license shall have a digitized color picture of the licensee. All licenses issued on and after January 1, 2000 shall be valid for a period of 48 calendar months. However, the director may, at his discretion, issue licenses and endorsements which shall expire on a date fixed by him. The fee for such licenses or endorsements shall be fixed in amounts proportionately less or greater than the fee otherwise established. Notwithstanding the provisions of this section to the contrary, a person 70 years of age or older may elect to have a license issued for a period of two or four years, which election may not be altered by the director. The fee for the two-year license shall be \$9, in addition to the fee for a digitized picture established in section 4 of P.L.2001, c.391 (C.39:3-10f4).

Each initial motor vehicle license issued to a person under the age of 21 after the effective date of P.L.1999, c.28 shall be conspicuously distinct, through the use of color and design, from the driver's licenses issued to persons 21 years of age or older. The director, in consultation with the Superintendent of State Police, shall determine the color and the manner in which the license is designed to achieve this result. The license shall also bear the words "UNDER 21" in a conspicuous manner. The director shall provide that upon attaining the age of 21, a licensee shall be issued a

replacement driver's license or a new license, as appropriate. The fee for a replacement license shall be \$5 in addition to the digitized picture fee.

As conditions for the renewal of a driver's license, the director shall provide that the picture of a licensee be updated except that the director may elect to use a stored picture to renew a license for a period not exceeding four additional years for \$18 in addition to the digitized picture fee.

Whenever a person has reconstructive or cosmetic surgery which significantly alters the person's facial features, the person shall notify the division and the director may require the picture of the licensee to be updated, for \$5 in addition to the digitized picture fee.

Nothing in this section shall be construed to alter or change any expiration date on any New Jersey driver's license issued prior to the operative date of P.L.2001, c.391 (C.39:3-10f4 et al.) and, unless a licensee's driving privileges are otherwise suspended or revoked, except as provided in R.S.39:3-10, that license shall remain valid until that expiration date.

Specific use of the driver's license and any information stored or encoded, electronically or otherwise, in relation thereto shall be in accordance with P.L.1997, c.188 (C.39:2-3.3 et seq.) and the federal Driver's Privacy Protection Act of 1994, Pub. L.103-322. Notwithstanding the provisions of any other law to the contrary, the digitized picture or any access thereto or any use thereof shall not be sold, leased or exchanged for value.

To replace a photo-license issued prior to the effective date of this act for a licensee who is temporarily out of this State, the director may issue a "valid without picture" picture license for the unexpired term of the license.

C.39:3-10f4 Fee for digitized picture.

4. The fee for a digitized picture shall be \$6 for each license, renewal or duplicate thereof, and shall be in addition to the fee presently authorized for the issuance of a driver's license pursuant to R.S.39:3-10.

5. Section 3 of P.L.1979, c.261 (C.39:3-10h) is amended to read as follows:

C.39:3-10h Process to prevent forgery, alteration.

3. The director shall provide for the use of a process or processes in the issuance of licenses with digitized color pictures that prevent, to the extent possible, the alteration, delamination, duplication, counterfeiting, photographing, forging or other modification of the license and prevent the superimposition of a digitized color picture other than the authorized original on such license. The director shall provide that material used for, and the manufacturing process, of, the license shall prevent, to the greatest extent possible, any alteration, delamination, duplication, counterfeiting,

photographing, forging or other modification of the license. A license that consists of a composite material that does not use lamination and offers at least the same level of security as that required by the director for noncomposite material may fulfill the requirements of this section. The director may provide for the electronic storage of the licensee's motor vehicle information, including the licensee's digitized picture and digitized signature, in a bar code, magnetic stripe or database. In addition, the director shall provide that the license include features to ensure the security and integrity of the license. Any information encoded in a bar code or magnetic stripe on the license shall be limited to the following: name, address, municipality of residence, state, zip code of residence, date of birth, under 21 until xx/xx/xx (date of licensee's 21st birthday), gender, color of eyes, height, driver's license number, date of issuance, expiration date, document type, class, endorsements and restrictions, organ donor status, identification of issuer, license fee, transaction number, and the licensee's digitized picture and digitized signature. Any information encoded in a bar code or magnetic stripe on the license shall be displayed on the driver's license, which may be done in abbreviated form.

6. Section 22 of P.L.1990, c.103 (C.39:3-10.30) is amended to read as follows:

C.39:3-10.30 Fees; duration of commercial driver license.

22. Notwithstanding the provisions of R.S.39:3-14 or any other sections of law which permit or require the issuance of a driver's license without charge, the required fee for a commercial driver license examination or learner's permit shall be \$35. A permit issued before April 1, 1992 shall be valid for a period of two years from the date of issuance, unless another time period is established for such permits in federal regulations promulgated by the Secretary of the United States Department of Transportation. The permit holder shall have unlimited testing opportunities consistent with the scheduling obligations of the Division of Motor Vehicles and the need to provide testing opportunities to all persons affected by this act. For an examination or learner's permit issued on or after April 1, 1992, the director may limit the permit's validity to a specific length of time or number of testing opportunities.

After the issuance of a commercial driver license, the examination or learner's permit fee for an additional endorsement or license class shall be \$10 per endorsement or class.

In addition to fees for a basic driver license and any non-commercial endorsement and renewals thereof, the required fee for a 48-month licensing period shall be \$18 for each commercial driver license and renewal thereof

and \$2 for each endorsement and renewal thereof. In addition, the director shall charge a fee of \$6 for a digitized picture of the licensee.

The commercial driver license shall expire on the last day of the 48th calendar month following the calendar month in which the license was issued. However, the director may, at his discretion, issue licenses and endorsements which shall expire on a date fixed by him. The fee for such licenses or endorsements shall be fixed in amounts proportionately less or greater than the fee otherwise established.

Nothing in this section shall be construed to alter or change any expiration date on any New Jersey commercial driver license issued prior to the operative date of P.L.2001, c.391 (C.39:3-10f4 et al.) and, unless a licensee's driving privileges are otherwise suspended or revoked, except as provided in R.S.39:3-10, the license shall remain valid until its expiration date.

7. Section 4 of P.L.1980, c.47 (C.39:3-29.5) is amended to read as follows:

C.39:3-29.5 Expiration of card; renewal cards for blind, handicapped valid for life, authorized presence in U.S. required for renewal.

4. a. Except as provided in subsection b. of this section, each original identification card authorized by section 2 of this act shall, unless canceled earlier, be valid for 48 calendar months from its date of issuance, and shall be renewable upon the request of the bearer of the card, pursuant to terms of license renewal established by the Division of Motor Vehicles, and upon payment of a fee as required by section 6 of this act. An identification card issued pursuant to this act to an applicant who is blind, disabled, or handicapped shall be valid for the life of the holder unless canceled by the holder. Cards issued prior to October 16, 1989 and valid upon the effective date of this amendatory act shall be valid for the life of the holder unless canceled by the holder. Cards issued to blind, disabled or handicapped persons between October 16, 1989 and the effective date of this amendatory act, and which are valid on the effective date of this act, shall be made valid for the life of the holder unless canceled by the holder, upon presentation of proof that the blindness, disability, or handicap existed at the time of the original application. The director is authorized to require periodic verification of information included on any identification card issued for or valid for the life of the holder. Nothing in this section shall be construed to alter or change any expiration date on any New Jersey identification card issued prior to the operative date of P.L.2001, c.391 (C.39:3-10f4 et al.) and any such identification card shall remain valid until its expiration date.

b. If the director issues an identification card to a person who has demonstrated authorization to be present in the United States for a period of time shorter than the standard periods of such cards, the director shall fix the expiration date of the identification card at a date based on the period in which the person is authorized to be present in the United States under federal immigration laws. The director may renew such an identification card only if it is demonstrated that the person's continued presence in the United States is authorized under federal law.

8. Section 6 of P.L.1980, c.47 (C.39:3-29.7) is amended to read as follows:

C.39:3-29.7 Fees.

6. The Division of Motor Vehicles shall charge fees as follows:	
Identification Card, Original	\$18
Identification Card, Duplicate	\$5
Identification Card, Renewal	\$18
Digitized picture	\$6, in addition to the fees required above

9. R.S.39:3-31 is amended to read as follows:

Duplicate certificates; licenses; new pictures; fees.

39:3-31. The director, upon presentation of a statement duly sworn to, stating that the original registration certificate or original motorized bicycle registration certificate has been destroyed, lost or stolen, may, if he is satisfied that the facts as set forth in the statement are substantially true, issue a duplicate or amended registration certificate or motorized bicycle registration certificate to the original holder thereof, upon the payment to the director of a fee of \$5 for each duplicate or amended registration certificate or motorized bicycle registration certificate so issued. The director, upon presentation of a statement, duly sworn to, stating that the original driver's license has been destroyed, lost or stolen, or requesting a new color picture, may, if he is satisfied that the facts as set forth in the statement are substantially true, issue a duplicate driver's license to the original holder thereof, upon payment to the director of a fee of \$5 in addition to the digitized picture fee.

10. R.S.39:3-36 is amended to read as follows:

Notification of change of residence; fees, penalties.

39:3-36. A licensed operator shall notify the director of any change in residence within one week after the change is made. Notice shall be in such

form and shall contain such information as the director may require. Upon notification, and payment of a fee of \$5 for the license in addition to the digitized picture fee, the director shall provide the licensed operator with a new license.

The registered owner of a motor vehicle or a motorized bicycle shall notify the director of any change in residence within one week after the change is made. Notice shall be in such form and shall contain such information as the director may require. Upon notification, and payment of a fee of \$5, the director shall provide the registered owner with a new registration certificate.

A person who violates this section shall be subject to a penalty of not more than \$25.

11. Section 4 of P.L.1995, c.401 (C.12:7-73) is amended to read as follows:

C.12:7-73 Fees for power vessel operator's license, digitized picture.

4. a. The fee for a 48-month power vessel operator's license required pursuant to section 3 of P.L.1995, c.401 (C.12:7-72) shall be \$18 and shall be paid to the director for deposit into the State General Fund.

b. Each New Jersey power vessel operator's license issued pursuant to section 3 of P.L.1995, c.401 (C.12:7-72) shall have a digitized color picture of the licensee. In addition to the fee required pursuant to subsection a. of this section, the fee for the digitized color picture shall be \$6 for each license or renewal.

12. R.S.39:3-13 is amended to read as follows:

Examination permits.

39:3-13. The director may, in his discretion, issue to a person over 17 years of age an examination permit, under the hand and seal of the director, allowing such person, for the purpose of fitting himself to become a licensed driver, to operate a designated class of motor vehicles other than passenger automobiles for a specified period of not more than 90 days, while in the company and under the supervision of a driver licensed to operate such designated class of motor vehicles.

The director, in his discretion, may issue for a specified period of not less than one year an examination permit to operate a passenger automobile to a person over 17 years of age regardless of whether a person has completed a course of behind-the-wheel automobile driving education pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1). An examination permit applicant who is under 18 years of age shall obtain the signature of a parent or guardian for submission to the division on a form prescribed by

the director. The director shall postpone for six months the driving privileges of any person who submits a fraudulent signature for a parent or guardian.

For six months immediately following the issuance of an examination permit, the holder who is less than 21 years of age shall operate the passenger automobile only when accompanied by, and under the supervision of, a New Jersey licensed driver who is at least 21 years of age and has been licensed to drive a passenger automobile for not less than three years. The holder of an examination permit who is at least 21 years of age shall operate the passenger automobile for the first three months under such supervision. The supervising driver shall sit in the front seat of the vehicle. Whenever operating a vehicle while in possession of an examination permit, the holder of the permit shall operate the passenger automobile with only one additional passenger in the vehicle excluding persons with whom the holder resides, except that this passenger restriction shall not apply when either the permit holder or one other passenger is at least 21 years of age. Further, the holder of the permit who is less than 21 years of age shall not drive during the hours between 12:01 a.m. and 5 a.m.; provided, however, that this condition may be waived for an emergency which, in the judgment of local police, is of sufficient severity and magnitude to substantially endanger the health, safety, welfare or property of a person, or for any bona fide employment or religion-related activity if the employer or appropriate religious authority provides written verification of such activity in a manner provided for by the director. The permit holder shall also ensure that all occupants of the vehicle are secured in a properly adjusted and fastened seat belt or child restraint system.

When notified by a court of competent jurisdiction that an examination permit holder has been convicted of a violation which causes the permit holder to accumulate more than two motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the director deems significant and applicable pursuant to regulation, in addition to any other penalty that may be imposed, the director shall, without the exercise of discretion or a hearing, suspend the examination permit holder's examination permit for 90 days. The director shall restore the permit following the term of the permit suspension if the permit holder satisfactorily completes a remedial training course of not less than four hours and remits a course fee prescribed by the director. The director also shall postpone without the exercise of discretion or a hearing the issuance of a basic license for 90 days if the director is notified by a court of competent jurisdiction that the examination permit holder, after

completion of the remedial training course, has been convicted of any motor vehicle violation which results in the imposition of any motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.182 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5, subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the director deems significant and applicable pursuant to regulation. When the director is notified by a court of competent jurisdiction that an examination permit holder has been convicted of any alcohol or drug-related offense unrelated to the operation of a motor vehicle and is not otherwise subject to any other suspension penalty therefor, the director shall, without the exercise of discretion or a hearing, suspend the examination permit for six months. A fine of \$100 shall be imposed for any other violation of the conditions of the examination permit.

An examination permit for a motorcycle or a commercial motor vehicle issued to a handicapped person, as determined by the Division of Motor Vehicles after consultation with the Department of Education, shall be valid for nine months or until the completion of the road test portion of his license examination, whichever period is shorter.

Each permit shall be sufficient license for the person to operate such designated class of motor vehicles in this State during the period specified, while in the company of and under the control of a driver licensed by this State to operate such designated class of motor vehicles, or, in the case of a commercial driver license permit, while in the company of and under the control of a holder of a valid commercial driver license for the appropriate license class and with the appropriate endorsements issued by this or any other state. Such person, as well as the licensed driver, except for a motor vehicle examiner administering a driving skills test, shall be held accountable for all violations of this subtitle committed by such person while in the presence of the licensed driver. In addition to requiring an applicant for an examination permit to submit satisfactory proof of identity and age, the director also shall require the applicant to provide, as a condition for obtaining the permit, satisfactory proof that the applicant's presence in the United States is authorized under federal law. If the director has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the director shall refuse to grant the permit until such time as the document may be verified by the issuing agency to the director's satisfaction.

The holder of an examination permit shall be required to take a road test in order to obtain a basic driver's license. No road test for any person who has been issued an examination permit to operate a passenger vehicle shall be given unless the person has met the requirements of this section. No road test for a basic driver's license shall be given unless the applicant has

first secured an examination permit and no such road test shall be scheduled for an applicant who has secured an examination permit for a passenger vehicle until at least one year shall have elapsed following the validation of the examination permit for practice driving or, in the case of an examination permit for other vehicles, until 20 days has elapsed, except that in the case of an omnibus endorsement or school bus no road test shall be scheduled until at least 10 days shall have elapsed. Every applicant for an examination permit to qualify for an omnibus endorsement or an articulated vehicle endorsement shall be a holder of a valid basic driver's license.

The required fees for special learners' permits and examination permits shall be as follows:

Basic driver's license	up to \$10
Motorcycle license or endorsement	\$5
Omnibus or school bus endorsement	\$25
Articulated vehicle endorsement	\$15

The director shall waive the payment of fees for issuance of examination permits for omnibus endorsements whenever the applicant establishes to the director's satisfaction that said applicant will use the omnibus endorsement exclusively for operating omnibuses owned by a nonprofit organization duly incorporated under Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes.

The specified period for which a permit is issued may be extended for not more than an additional 60 days, without payment of added fee, upon application made by the holder thereof, where the holder has applied to take the examination for a driver's license prior to the expiration of the original period for which the permit was issued and the director was unable to schedule an examination during said period.

13. Section 1 of P.L.1950, c.127 (C.39:3-13.1) is amended to read as follows:

C.39:3-13.1 Issuance of special learner's permit.

1. The Director of the Division of Motor Vehicles may issue to a person over 16 years of age a special learner's permit, under the hand and seal of the director, allowing such person, for the purpose of preparing himself to qualify for a provisional license for a passenger automobile by operating a dual pedal controlled motor vehicle while taking a required course of behind-the-wheel automobile driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State or a course of behind-the-wheel automobile driving instruction conducted by a drivers' school duly licensed pursuant to the provisions of P.L.1951, c.216 (C.39:12-1 et seq.). The special learner's

permit shall be issued in lieu of the examination permit provided for in R.S.39:3-13. In addition to requiring an applicant for a permit to submit satisfactory proof of identity and age, the director also shall require the applicant to provide, as a condition for obtaining a permit, satisfactory proof that the applicant's presence in the United States is authorized under federal law. If the director has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the director shall refuse to grant the permit until such time as the document may be verified by the issuing agency to the director's satisfaction.

The special learner's permit described above, when issued to a person taking a course of behind-the-wheel driving education conducted in a public, parochial or private school, shall be retained in the office of the school principal at all times except during such time as the person to whom the permit is issued is undergoing behind-the-wheel automobile driving instruction. The director may make such rules and regulations as he may deem necessary to carry out the provisions of this section.

14. Section 2 of P.L.1980, c.47 (C.39:3-29.3) is amended to read as follows:

C.39:3-29.3 Identification cards, issuance; contents.

2. The Division of Motor Vehicles shall issue an identification card to any resident of the State who is 17 years of age or older and who is not the holder of a valid learner's permit or a valid driver's license. The identification card shall attest to the true name, correct age, and other identifying data as certified by the applicant for such identification card. Every application for an identification card shall be signed and verified by the applicant and shall be supported by such documentary evidence of the age and identity, or blindness, disability, or handicap, of such person as the division may require. In addition to requiring an applicant for an identification card to submit satisfactory proof of identity and age, the director also shall require the applicant to provide, as a condition for obtaining the card, satisfactory proof that the applicant's presence in the United States is authorized under federal law. If the director has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the director shall refuse to grant the identification card until such time as the document may be verified by the issuing agency to the director's satisfaction.

C.39:3-10f5 "Secure Driver's License Fund;" use.

15. a. There is established in the General Fund a separate special non-lapsing account to be known as the "Secure Driver's License Fund."

Revenues from the fees collected for the digitized picture provided for in this act shall be credited to the fund.

b. Moneys in the fund shall be appropriated to the Department of Transportation for the purposes of ensuring secure driver's license documents and the handling thereof including the review, processing, production and distribution of a secure driver's license, identification card, or any related support documents required by or in relation to this act.

c. Any revenue credited to the fund but not appropriated to the department shall remain in the fund exclusively for the purposes set forth in this act.

16. There is hereby appropriated to the Department of Transportation from the General Fund the sum of \$1,500,000 for the cost of implementing the provisions of this act.

17. Notwithstanding the provisions of P.L.1999, c.28 (C.39:3-10f1 et al.) to the contrary, the Director of the Division of Motor Vehicles may delay the implementation of the provisions of that act, other than those set forth in section 14 thereof, until the 60th day after the director certifies to the Commissioner of Transportation that the division is prepared to issue drivers' licenses with digitized pictures of licensees, but such implementing date shall be not later than January 1, 2003. The director shall make every effort to provide the certification required for P.L.1999, c.28 to be implemented as soon as practicable.

18. This act shall take effect immediately, except that sections 3, 5, 6, 8, 9, 10, 11, and the required fees for the 48-month license added to R.S. 39:3-10 by section 2 of this act shall remain inoperative until the 60th day after the Director of the Division of Motor Vehicles in the Department of Transportation certifies to the Commissioner of Transportation that the division is prepared to issue drivers' licenses with digitized pictures of licensees, but such operative date shall be no later than January 1, 2003.

Approved January 8, 2002.

CHAPTER 392

AN ACT concerning sex offender registration requirements and amending P.L.1994, c.133.

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

1. Section 2 of P.L.1994, c.133 (C.2C:7-2) is amended to read as follows:

C.2C:7-2 Registration of sex offenders; definition; requirements.

2. a. 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; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in

paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

c. A person required to register under the provisions of this act shall do so on forms to be provided by the designated registering agency as follows:

(1) A person who is required to register and who is under supervision in the community on probation, parole, furlough, work release, or a similar program, shall register at the time the person is placed under supervision or no later than 120 days after the effective date of this act, whichever is later, in accordance with procedures established by the Department of Corrections, the Department of Human Services, the Juvenile Justice Commission established pursuant to section 2 of P.L. 1995, c.284 (C.52:17B-170) or the Administrative Office of the Courts, whichever is responsible for supervision;

(2) A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release in accordance with procedures established by the Department of Corrections, the Department of Human Services or the Juvenile Justice Commission;

(3) A person moving to or returning to this State from another jurisdiction shall register with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police within 120 days of the effective date of this act or 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. Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

g. A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 393

AN ACT concerning pediatric rehabilitation hospitals, supplementing Titles 26 and 30 of the Revised Statutes.

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

C.30:4D-7g Findings, declarations relative to pediatric rehabilitation hospitals.

1. The Legislature finds and declares that:

a. Currently, there are two pediatric rehabilitation hospitals in the State that provide pediatric inpatient and ambulatory rehabilitation and pediatric long-term care services to children throughout the State. These hospitals offer a variety of medical, developmental and educational services to children with severe disabilities and chronic illnesses; and

b. There is a tremendous need in the State for the unique services provided by these facilities, and few providers within the health care community have the capability and expertise to properly treat the special needs of these children.

C.30:4D-7h Reimbursement by State Medicaid program, rates.

2. A pediatric rehabilitation hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall be reimbursed a prospective per diem rate by the State Medicaid program for Medicaid fee-for-service recipients.

The initial prospective per diem rate shall be based on the total allowable cost for Medicaid patients divided by the total Medicaid days from the calendar year 1999 Medicare/Medicaid cost report, and shall be considered the base year rate. If the hospital has been in operation less than two full years prior to fiscal year 1999, the prospective per diem rate will be set using its first finalized audited fiscal year 2000 Medicaid/Medicare cost report. The base year rate shall be updated each year by the economic factor specified in N.J.A.C.10:52-5.13.

The Commissioner of Human Services shall adopt regulations to permit a pediatric rehabilitation hospital to seek rate relief or to seek a new base year rate in the event the hospital can demonstrate that it is entitled to rate relief or a new base year pursuant to applicable Medicare Principles of Reimbursement.

C.30:4D-7i Exemption from close proximity requirements, notification as to off-site location.

3. A pediatric rehabilitation hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall not be subject to the close proximity requirements established pursuant to N.J.A.C.10:52-1.3(b)(1) for the purposes of receiving Medicaid fee-for-service reimbursement for outpatient hospital services.

A pediatric rehabilitation hospital which establishes an off-site location to provide outpatient services shall notify the Division of Medical Assistance and Health Services in the Department of Human Services in accordance with the requirements of N.J.A.C.10:52-1.3.

4. The Commissioner of Health and Senior Services shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt regulations to carry out the purposes of this act.

5. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 394

AN ACT concerning the resale of tickets of admission to places of entertainment, amending P.L.1966, c.39 and amending and supplementing P.L.1983, c.135.

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

1. Section 1 of P.L.1983, c.135 (C.56:8-26) is amended to read as follows:

C.56:8-26 Definitions.

1. As used in this act:
 - a. "Director" means the director of the Division of Consumer Affairs in the Department of Law and Public Safety.
 - b. "Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.
 - c. "Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.
 - d. "Place of entertainment" means any privately or publicly owned and operated entertainment facility within this State, such as a theater, stadium, museum, arena, racetrack or other place where performances, concerts, exhibits, games or contests are held and for which an entry fee is charged.
 - e. "Ticket" means any piece of paper which indicates that the bearer has paid for entry or other evidence which permits entry to a place of entertainment.
 - f. "Ticket broker" means any person situated in and operating in this State who is involved in the business of reselling tickets of admission to places of entertainment and who charges a premium in excess of the price, plus taxes, printed on the tickets.
 - g. "Resale" means a sale by a person other than the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.
 - h. "Resell" means to offer for resale or to consummate a resale.
 - i. "Digger" means a person temporarily hired for the purpose of securing tickets by intimidating a purchaser waiting in line to procure event tickets.

2. Section 2 of P.L.1983, c.135 (C.56:8-27) is amended to read as follows:

C.56:8-27 Requirements for ticket broker.

2. No ticket broker shall engage in or continue in the business of reselling tickets for admission to a place of entertainment without meeting the following requirements:

a. Owning, operating or maintaining a permanent office, branch office, bureau, agency, or other place of business, not including a post office box, for the purpose of reselling tickets;

b. Obtaining a certificate of registration to resell or engage in the business of reselling tickets from the director;

c. Listing the ticket broker's registration number in any form of advertisement or solicitation in which tickets are being sold for the purpose of purchase by the general public for events in this State;

d. Maintaining records of ticket sales, deposits and refunds for a period of not less than two years from the time of any of these transactions;

e. Disclosing to the purchaser, by means of verbal description or a map, the location of the seats represented by the tickets;

f. Disclosing to the purchaser the cancellation policy of that broker;

g. Disclosing that a service charge is added by the ticket broker to the stated price on the tickets and is included by the broker in any advertisement or promotion for an event;

h. Disclosing to the purchaser, whenever applicable, that the ticket broker has a guarantee policy. If a ticket broker guarantees delivery of tickets to a purchaser and fails to deliver the tickets, the ticket broker shall provide a full refund for the cost of the tickets;

i. Disclosing to the purchaser of tickets when he is utilizing a tentative order policy, popularly known as a "try and get." When a ticket broker fails to obtain tickets on a "try and get" basis, the broker shall refund any deposit made by a purchaser of those tickets within a reasonable time, as shall be determined by the director;

j. When guaranteeing tickets in conjunction with providing a tour package, a ticket broker who fails to provide a purchaser with those tickets shall refund fully the price of the tour package and tickets; and

k. Providing to a purchaser of tickets who cancels an order a full refund for the cost of the tickets less shipping charges, if those tickets are returned to the broker within three days after receipt; provided, that when tickets are purchased within seven days of an event, a refund shall be given only if the tickets are returned within one day of receipt; and further provided, that no refund shall be given on any tickets purchased within six days of an event unless the ticket broker is able to resell the tickets.

3. Section 3 of P.L.1983, c.135 (C.56:8-28) is amended to read as follows:

C.56:8-28 Application for registration, fee.

3. a. The division shall prepare and furnish to applicants for registration application forms and requirements prescribed by the director pertaining to the applications for and the issuance of certificates of registration to ticket brokers.

b. Every applicant for a certificate of registration to engage in the business of reselling tickets as a ticket broker shall file a written application with the division on the form furnished by, and consistent with, the regulations prescribed by the director.

c. Each application shall be accompanied by a fee which shall be determined by the director and shall not exceed \$500, and a description of the location where the applicant proposes to conduct his business.

4. Section 4 of P.L.1983, c.135 (C.56:8-29) is amended to read as follows:

C.56:8-29 Issuance of certificate of registration.

4. a. Within 120 days after receipt of the completed application, fee and bond, if any, and when the director is satisfied that the applicant has complied with all of the requirements of this act, the director shall grant and issue a certificate of registration to the applicant.

b. The certificate of registration granted may be renewed for a period of two years upon the payment of a renewal fee which shall be determined by the director and shall not exceed \$500.

c. No certificate of registration shall be transferred or assigned without the approval of the director. Any request for a change in the location of the premises operated by any registrant situated in and operating in this State shall be submitted to the director in writing no less than 30 days prior to that relocation. The certificate of registration shall run to January 1 in the second year next ensuing the date thereof unless sooner revoked by the director.

5. Section 5 of P.L.1983, c.135 (C.56:8-30) is amended to read as follows:

C.56:8-30 Bond required to engage in business of reselling tickets as a ticket broker.

5. The director shall require the applicant for a certificate of registration to engage in the business of reselling tickets as a ticket broker to file with the application a bond in the amount of \$10,000.00 with two or more

sufficient sureties or an authorized surety company, which bond shall be approved by the director.

Each bond shall be conditioned on the promise that the applicant, his agents or employees will not be guilty of fraud or extortion, will not violate any of the provisions of this act, will comply with the rules and regulations promulgated by the director, and will pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud or deceit or any unlawful act or omission in connection with the provisions of this act and the business conducted under this act.

6. Section 8 of P.L.1983, c.135 (C.56:8-33) is amended to read as follows:

C.56:8-33 Price charged printed on ticket, maximum premium for reseller.

8. a. Each place of entertainment shall print on the face of each ticket and include in any advertising for any event the price charged therefor. Tickets printed prior to the enactment of P.L.2001, c.394 (C.56:8-35.1 et al.) shall have endorsed thereon the maximum premium not to exceed 20% of the ticket price or \$3.00, whichever is greater, plus lawful taxes, at which the ticket may be resold. Tickets printed on or after the effective date of P.L.2001, c.394 (C.56:8-35.1 et al.) shall have endorsed thereon the maximum premium not to exceed 20% of the ticket price or \$3.00, whichever is greater, plus lawful taxes, at which the ticket may be resold, except for tickets resold by registered ticket brokers or season ticket holders.

b. No person other than a registered ticket broker or season ticket holder shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a maximum premium in excess of 20% of the ticket price or \$3.00, whichever is greater, plus lawful taxes. No registered ticket broker or season ticket holder shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a premium in excess of 50% of the price paid to acquire the ticket, plus lawful taxes.

7. Section 9 of P.L.1983, c.135 (C.56:8-34) is amended to read as follows:

C.56:8-34 Reselling tickets prohibited in certain area; exceptions.

9. a. No person shall resell or purchase with the intent to resell any ticket, in or on any street, highway, driveway, sidewalk, parking area, or common area owned by a place of entertainment in this State, or any other area adjacent to or in the vicinity of any place of entertainment in this State as determined by the director; except that a person may resell, in an area which may be designated by a place of entertainment in this State, any ticket

or tickets originally purchased for his own personal or family use at no greater than the lawful price permitted under this act.

C.56:8-35.1 Withholding tickets from sale, prohibited amount.

8. It shall be an unlawful practice for a person, who has access to tickets to an event prior to the tickets' release for sale to the general public, to withhold those tickets from sale to the general public in an amount exceeding 5% of all available seating for the event.

C.56:8-35.2 Refunds prohibited under certain circumstances.

9. A purchaser of tickets who places a special order with a ticket broker for tickets that are not in stock or are obtained for a purchaser's specific need and are paid for in advance by the ticket broker, shall not be eligible to receive a refund for that purchase unless the ticket broker is able to find someone else to purchase the tickets and as long as the purchaser is notified in advance of this policy.

10. Section 1 of P.L.1966, c.39 (C.56:8-13) is amended to read as follows:

C.56:8-13 Penalties.

1. Any person who violates any of the provisions of the act to which this act is a supplement shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense. The penalty shall be exclusive of and in addition to any moneys or property ordered to be paid or restored to any person in interest pursuant to section 2 of P.L.1966, c.39 (C.56:8-14) or section 3 of P.L.1971, c.247 (C.56:8-15).

C.56:8-35.3 Method for lawful sell back.

11. The director and places of entertainment shall create a method for season ticket holders and other ticket holders to lawfully sell back tickets to the venue for events they will not be able to attend.

C.56:8-35.4 Use of digger unlawful.

12. It shall be an unlawful practice for a person to use a digger to acquire any ticket.

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

Approved January 8, 2002.

CHAPTER 395

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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

1. Upon certification by the Director of the Division of Budget and Accounting in the Department of the Treasury that federal funds to support the expenditures listed below are available, the following sum is appropriated:

10 DEPARTMENT OF AGRICULTURE
40 Community Development and Environmental Management
49 Agricultural Resources, Planning, and Regulation

03-3330 Resource Development Services	<u>\$1,600,000</u>
Total Appropriation,	
Agricultural Resources, Planning, and Regulation . .	<u>\$1,600,000</u>
<i>State-Aid and Grants:</i>	
03 Specialty Crop Grant Program	(\$1,600,000)

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 396

AN ACT concerning cigarette packages to which the affixation of cigarette tax stamps is prohibited, amending P.L.1948, c.65.

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

1. Section 405 of P.L.1948, c.65 (C.54:40A-15) is amended to read as follows:

- C.54:40A-15 Distributors to affix stamps.**
- 405. Distributors to affix stamps.

a. Unless stamps have been previously affixed, the stamps required by this act shall be affixed to packages of cigarettes and canceled by the licensed distributor within twenty-four hours of the receipt of all unstamped cigarettes, exclusive of Saturdays, Sundays and legal holidays, and prior to any and all deliveries except deliveries to points outside the State, deliveries by manufacturers to licensed distributors and those deliveries which this State is prohibited from taxing under the Constitution or the statutes of the United States.

b. Cigarette packages to which stamps shall not be affixed.

A distributor shall not affix a stamp to a package of cigarettes if the package:

(1) does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including but not limited to the permanent imprinting on the primary packaging of such cigarettes of the package warning labels in the text and formats specified by subsections (a) and (b), respectively, of section 4 of the "Federal Cigarette Labeling and Advertising Act," Pub.L.89-92, 15 U.S.C. s.1333, and the rotation of such labels in accordance with the provisions of subsection (c) of that section;

(2) is labeled "For Export Only," "U.S. Tax Exempt," "For use Outside U.S.," or other wording indicating that the manufacturer did not intend that the product be sold in the United States;

(3) has been altered, through placement of a sticker on the package or other means, by adding or deleting wording, labels, or warnings described in paragraph (1) or paragraph (2) of this subsection;

(4) contains cigarettes with respect to which no list of ingredients used in their manufacture has been provided to the Secretary of Health and Human Services as required by subsection (a) of section 7 of Pub.L.89-92, 15 U.S.C. s.1335a;

(5) has been imported into the United States after January 1, 2000 in violation of 19 U.S.C. s.1681a or 26 U.S.C.s.5754; or

(6) in any way violates federal trademark or copyright laws.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 397

AN ACT concerning the chairman of the State Athletic Control Board and amending P.L.1985, c.83 and P.L.1974, c.55.

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

1. Section 3 of P.L.1985, c.83 (C.5:2A-3) is amended to read as follows:

C.5:2A-3 State Athletic Control Board.

3. a. There is created and established within the Department of Law and Public Safety a State Athletic Control Board. The board shall consist of three public members appointed by the Governor with the advice and consent of the Senate for terms of three years, except that of the three members first appointed, one shall be appointed for a term of one year, one for a term of two years and one for a term of three years. One of the members shall be designated by the Governor as chairman of the board at the time of the member's appointment, and shall serve as chairman during the member's entire term of office and until a successor is duly appointed and qualified. The initial chairman shall be the member appointed to a term of three years. No more than two of the members shall be of the same political party. Members shall serve until their successors are appointed and have been qualified. The terms of their successors shall be calculated from the expiration of the incumbents' terms. Any vacancy in the membership of the board other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

b. Each member of the board may be removed from office by the Governor for cause. Each member of the board before entering upon his duties shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of the member's ability. A record of these oaths shall be filed in the offices of the Secretary of State and the Attorney General.

c. The chairman of the board shall devote his entire time to the duties of the board and shall not engage in any occupation, profession or other gainful employment. The chairman shall be compensated pursuant to section 2 of P.L.1974, c.55 (C.52:14-15.108). The two other members of the board shall receive an annual salary of \$10,000.00, shall be reimbursed for actual expenses incurred in the performance of their responsibilities and shall not be eligible for membership in any State-administered retirement system.

d. The powers of the board shall be vested in the members thereof in office from time to time, and two members of the board shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of at least two members of the board. No vacancy in the membership

of the board shall impair the right of a quorum to exercise all powers and perform all duties of the board.

2. Section 2 of P.L.1974, c.55 (C.52:14-15.108) is amended to read as follows:

C.52:14-15.108 Salary ranges for departmental officers, directors.

2. The salary ranges for the following positions shall be as established by the Department of Personnel with the approval of the Director, Division of Budget and Accounting. The salary rate for any such position shall be the salary step in such range next above the salary currently being paid; provided, however, that any sums appropriated for salaries may be made available for salary adjustments therein arising from various exigencies of the State service and for normal merit salary increments as the Commissioner of Personnel, the State Treasurer and the Director of the Division of Budget and Accounting shall determine; and provided, further, that nothing in this act shall reduce the salary rate for any such position below that which is being paid on the effective date of this act:

- Personnel Department
- Chief Examiner and Secretary
- Community Affairs Department
- Assistant Commissioner of Community Affairs
- Director, Division of State and Regional Planning
- Director, Division of Local Government Services
- Director, Division of Housing and Urban Renewal
- Director, Office of Aging Programs
- Director, Office on Women
- Environmental Protection Department
- Director, Division of Water Resources
- Director, Division of Parks and Forestry
- Director of Fish, Game and Shell Fisheries
- Director, Division of Marine Services
- Director, Division of Environmental Quality
- Health and Senior Services Department
- Director, Division, of Narcotic and Drug Abuse Control
- Corrections Department
- Chairman, State Parole Board
- Associate Member, State Parole Board
- Public Defender
- Labor Department
- Director, Workplace Standards
- Law and Public Safety Department

Colonel and Superintendent, State Police
 Director, Division of Motor Vehicles
 State Medical Examiner
 Director, Division of Alcoholic Beverage Control
 State Superintendent of Weights and Measures
 Chairman, State Athletic Control Board
 Public Utilities Department
 Director, Office of Cable Television
 Executive Director, Public Broadcasting
 State Department
 Transportation Department
 Assistant Commissioner for Highways
 Assistant Commissioner for Public Transportation
 Treasury Department
 Director, Division of Budget and Accounting
 Director, Division of Taxation
 Director, Division of Purchase and Property
 Director, Division of Pensions and Benefits
 Director, Division of State Lottery.

3. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 398

AN ACT concerning the remediation of certain sanitary landfill facilities, amending P.L.1997, c.278, supplementing Title 13 and Title 58 of the Revised Statutes, and making an appropriation.

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

C.13:1E-109.1 Meadowlands Commission payment to certain solid waste debt defeasance fund.

1. Notwithstanding the provisions of section 35 of P.L.1975, c.326 (C.13:17-10.1), sections 10 and 11 of P.L.1981, c.306 (C.13:1E-109 and C.13:1E-110), section 8 of P.L.1985, c.368 (C.13:1E-176), or any rules or regulations adopted pursuant thereto, or any order issued by the Board of Public Utilities or the Department of Environmental Protection to the contrary, and subject to the approval of the Director of the Division of Budget and Accounting, the New Jersey Meadowlands Commission may

withdraw from the escrow accounts established for the closure and post-closure monitoring of the sanitary landfill facilities operated by the commission an amount not to exceed \$42,000,000 for payment to the State Treasurer for deposit in any solid waste debt defeasance fund created with respect to any county included within the Hackensack Meadowlands District.

C.13:1E-109.2 Payments into escrow accounts of Meadowlands Commission, certain, authorized.

2. The provisions of any other law to the contrary notwithstanding, there is appropriated from the Sanitary Landfill Facility Contingency Fund established pursuant to section 6 of P.L.1981, c.306 (C.13:1E-105) an amount equal to the moneys paid into the fund pursuant to subsection b. of section 11 of P.L.1981, c.306 (C.13:1E-110), from the moneys remaining in the escrow accounts established for the closure of the Kingsland Park Sanitary Landfill pursuant to section 10 of P.L.1981, c.306 (C.13:1E-109) or pursuant to an order issued by the Board of Public Utilities or the Department of Environmental Protection, subsequent to the proper and complete closure of the Kingsland Park Sanitary Landfill pursuant to law, but not subsequent to post-closure obligations, to the New Jersey Meadowlands Commission for deposit into the escrow accounts established for the closure and post-closure monitoring of the sanitary landfill facilities operated by the commission.

3. There is appropriated from the General Fund such amounts necessary to fully fund the closure and post-closure obligations of the New Jersey Meadowlands Commission with respect to sanitary landfill facilities operated by the commission, not to exceed \$23,500,000, subject to the approval of the Director of the Division of Budget and Accounting and upon such terms and conditions as the State Treasurer and the commission may agree.

4. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to read as follows:

C.58:10B-31 Reimbursement of remediation costs.

39. a. The State Treasurer shall reimburse the developer the amount of the remediation costs agreed upon in the redevelopment agreement, and as provided in sections 35 and 36 of P.L.1997, c.278 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification by the director pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). The developer shall be entitled to periodic payments from the fund in an amount, in the frequency, and over the time period as provided in the redevelopment agreement.

Notwithstanding any other provision of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not reimburse the developer any amount of the remediation costs from the fund until the State Treasurer is satisfied that the anticipated tax revenues from the redevelopment project have been realized by the State in an amount sufficient to pay for the cost of the reimbursements.

b. A developer shall submit to the director updated remediation costs actually incurred by the developer for the remediation of the contaminated property located at the site of the redevelopment project as provided in the redevelopment agreement. The reimbursement authorized pursuant to this section shall continue until such time as the aggregate dollar amount of the agreed upon reimbursement. To remain entitled to the reimbursement authorized pursuant to this section, the developer shall perform and complete all remediation activities as may be required pursuant to the memorandum of agreement entered into with the Commissioner of Environmental Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29). The Department of Environmental Protection may review the remediation costs incurred by the developer to determine if they are reasonable.

Reimbursable remediation costs shall include costs that are incurred in preparing the area of land whereon the contaminated site is located for remediation and may include costs of dynamic compaction of soil necessary for the remediation.

C.58:10B-27.1 State may enter into certain redevelopment agreements at certain landfill sites.

5. a. The provisions of any other law, or any rule or regulation adopted pursuant thereto to the contrary notwithstanding, the State may enter into a redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27) for the redevelopment project at the site of the following landfills: (1) the Avon Sanitary Landfill; (2) the Kingsland Park Sanitary Landfill; (3) the Lyndhurst Sanitary Landfill; and (4) the Rutherford Sanitary Landfill, in which the State may agree to reimburse the developer for the closure and remediation costs associated with the proper closure and remediation of the area of land whereon the Avon Sanitary Landfill, the Kingsland Park Sanitary Landfill, the Lyndhurst Sanitary Landfill, and the Rutherford Sanitary Landfill are located.

b. As used in this section, "closure and remediation costs" means all reasonable costs associated with the closure and remediation of the Avon Sanitary Landfill, the Kingsland Park Sanitary Landfill, the Lyndhurst Sanitary Landfill, and the Rutherford Sanitary Landfill, except that "closure and remediation costs" shall not include any costs incurred in financing the remediation and closure of a particular landfill; and "closure" means all

activities associated with the design, purchase, construction or maintenance of all measures required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from the Avon Sanitary Landfill, the Kingsland Park Sanitary Landfill, the Lyndhurst Sanitary Landfill, and the Rutherford Sanitary Landfill subsequent to the termination of operations at these landfills, or at any portion thereof, including, but not necessarily limited to, the placement of final earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems, and long-term operations and maintenance, at the site of these landfills.

6. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 399

AN ACT providing the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production, amending P.L.1993, c.171.

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

1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to read as follows:

C.54:10A-5.17 Definitions.

2. For the purposes of this act:

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

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

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

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

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

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

of part-time employees shall be aggregated to determine the number of full-time employee equivalents.

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

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

a. the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related person for its then fair market value; and

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

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

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

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

"Related person" means:

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

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

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

d. a member of the same controlled group as the taxpayer.
"Tax year" means the fiscal or calendar accounting year of a taxpayer.

2. This act shall take effect immediately, be retroactive to January 1, 2002 and apply to tax years beginning on and after January 1, 2002

Approved January 8, 2002.

CHAPTER 400

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

54 DEPARTMENT OF HUMAN SERVICES
50 Economic Planning, Development and Security
55 Social Services Programs
7570 Division of Youth and Family Services
GRANTS-IN-AID

16-7570 Services to Families and Children \$500,000
Grants-in-Aid:

16 Somerset Hills School (\$500,000)

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 401

AN ACT concerning the restructuring of certain solid waste facility bonds, and providing for the financing thereof through the New Jersey Economic Development Authority.

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

1. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read as follows:

C.34:1B-3 Definitions.

3. As used in the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), P.L.1979, c.303 (C.34:1B-5.1 et seq.), sections 50 through 54 of P.L.2000, c.72 (C.34:1B-5.5 through 34:1B-5.9), P.L.1981, c.505 (C.34:1B-7.1 et seq.), P.L.1986, c.127 (C.34:1B-7.7 et seq.), P.L.1992, c.16 (C.34:1B-7.10 et seq.) and section 6 of P.L.2001, c.401 (C.34:1B-4.1), unless a different meaning clearly appears from the context:

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

"Bonds" means bonds or other obligations issued by the authority pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), "Economic Recovery Bonds or Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or bonds, notes, other obligations and refunding bonds issued by the authority pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.).

"Cost" means the cost of the acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility including water transmission facilities, or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of energy saving improvements or pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development deemed by the authority to be necessary or useful and convenient for any project or school facilities project or in connection therewith; discount on bonds; cost of issuance of bonds; engineering and inspection costs; costs of financial, legal, professional and other estimates and advice; organization, administrative, insurance, operating and other expenses of the authority or any person prior to and during any acquisition or construction, and all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project or school facilities project or part thereof, and also such provision for reserves for payment or security of principal of or interest on bonds during or after such acquisition or construction as the authority may determine.

"County" means any county of any class.

"County solid waste facility" means a solid waste facility that is designated by a public authority or county in its adopted district solid waste

management plan as approved by the department prior to November 10, 1997 as the in-county facility to which solid waste generated within the boundaries of the county is transported for final disposal, or transfer for transportation to an offsite solid waste facility or designated out-of-district disposal site for disposal, as appropriate, pursuant to interdistrict or intradistrict waste flow orders issued by the department, regardless of whether the county solid waste facility was acquired, constructed, operated, abandoned or canceled.

"Department" means the Department of Environmental Protection.

"Development property" means any real or personal property, interest therein, improvements thereon, appurtenances thereto and air or other rights in connection therewith, including land, buildings, plants, structures, systems, works, machinery and equipment acquired or to be acquired by purchase, gift or otherwise by the authority within an urban growth zone.

"Person" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, or other legal entities, including public or governmental bodies, as well as natural persons. "Person" shall include the plural as well as the singular.

"Pollution control project" means any device, equipment, improvement, structure or facility, or any land and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction, or the refinancing thereof in order to facilitate improvements or additions thereto or upgrading thereof, and all real and personal property deemed necessary thereto, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, thermal pollution control facility, radiation contamination control facility, wastewater collection system, wastewater treatment works, sewage treatment works system, sewage treatment system or solid waste facility or site; provided that the authority shall have received from the Commissioner of the State Department of Environmental Protection or the commissioner's duly authorized representative a certificate stating the opinion that, based upon information, facts and circumstances available to the State Department of Environmental Protection and any other pertinent data, (1) the pollution control facilities do not conflict with, overlap or duplicate any other planned or existing pollution control facilities undertaken or planned by another public agency or authority within any political subdivision, and (2) the facilities, as designed, will be a pollution control project as defined in the provisions of P.L. 1974, c. 80 (C. 34:1B-1 et seq.) and are in furtherance of the purpose of abating or controlling pollution.

"Project" means: (1) (a) acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility, including water transmission facilities or other improvement, whether or not in existence or under construction, (b) purchase and installation of equipment and machinery, (c) acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities; and (2) (a) the acquisition, financing, or refinancing of inventory, raw materials, supplies, work in process, or stock in trade, or (b) the financing, refinancing or consolidation of secured or unsecured debt, borrowings, or obligations, or (c) the provision of financing for any other expense incurred in the ordinary course of business; all of which are to be used or occupied by any person in any enterprise promoting employment, either for the manufacturing, processing or assembly of materials or products, or for research or office purposes, including, but not limited to, medical and other professional facilities, or for industrial, recreational, hotel or motel facilities, public utility and warehousing, or for commercial and service purposes, including, but not limited to, retail outlets, retail shopping centers, restaurant and retail food outlets, and any and all other employment promoting enterprises, including, but not limited to, motion picture and television studios and facilities and commercial fishing facilities, commercial facilities for recreational fishermen, fishing vessels, aquaculture facilities and marketing facilities for fish and fish products and (d) acquisition of an equity interest in, including capital stock of, any corporation; or any combination of the above, which the authority determines will: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State, or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State, or (iii) maintain or increase the tax base of the State or of any political subdivision of the State, or (iv) maintain or diversify and expand employment promoting enterprises within the State; and (3) the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of an energy saving improvement or pollution control project which the authority determines will tend to reduce the consumption in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy or to reduce, abate or prevent environmental pollution within the State; and (4) the acquisition, construction, reconstruction, repair, alteration, improvement, extension, development, financing or refinancing of infrastructure and transportation facilities or improvements related to economic development and of cultural, recreational and tourism facilities or improvements related to economic development and of capital facilities for primary and secondary schools and of mixed use projects consisting of housing and commercial development; and (5) the

establishment, acquisition, construction, rehabilitation, improvement, and ownership of port facilities as defined in section 3 of P.L.1997, c.150 (C.34:1B-146). Project may also include: (i) reimbursement to any person for costs in connection with any project, or the refinancing of any project or portion thereof, if determined by the authority as necessary and in the public interest to maintain employment and the tax base of any political subdivision and will facilitate improvements thereto or the completion thereof, and (ii) development property and any construction, reconstruction, improvement, alteration, equipment or maintenance or repair, or planning and designing in connection therewith. For the purpose of carrying out mixed use projects consisting of both housing and commercial development, the authority may enter into agreements with the New Jersey Housing and Mortgage Finance Agency for loan guarantees for any such project in accordance with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for that purpose shall allocate to the New Jersey Housing and Mortgage Finance Agency, under such agreements, funding available pursuant to subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project shall not include a school facilities project.

"Public authority" means a municipal or county utilities authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); a county improvement authority created pursuant to the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.); or a pollution control financing authority created pursuant to the "New Jersey Pollution Control Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.) that has issued solid waste facility bonds or that has been designated by the county pursuant to section 12 of P.L.1975, c.326 (C.13:1E-21) to supervise the implementation of the district solid waste management plan.

"Revenues" means receipts, fees, rentals or other payments to be received on account of lease, mortgage, conditional sale, or sale, and payments and any other income derived from the lease, sale or other disposition of a project, moneys in such reserve and insurance funds or accounts or other funds and accounts, and income from the investment thereof, established in connection with the issuance of bonds or notes for a project or projects, and fees, charges or other moneys to be received by the authority in respect of projects or school facilities projects and contracts with persons.

"Resolution" means any resolution adopted or trust agreement executed by the authority, pursuant to which bonds of the authority are authorized to be issued.

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from

domestic and community activities, and shall include all other waste materials including liquids, except for source separated recyclable materials or source separated food waste collected by livestock producers approved by the State Department of Agriculture to collect, prepare and feed such wastes to livestock on their own farms.

"Solid waste disposal" means the storage, treatment, utilization, processing, or final disposal of solid waste.

"Solid waste facility bonds" means the bonds, notes or other evidences of financial indebtedness issued by, or on behalf of, any public authority or county related to the planning, design, acquisition, construction, renovation, installation, operation or management of a county solid waste facility.

"Solid waste facilities" means, and includes, the plants, structures and other real and personal property acquired, constructed or operated by, or on behalf of, any county or public authority pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, including co-composting facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Energy saving improvement" means the construction, purchase and installation in a building devoted to industrial or commercial purposes of any of the following, designed to reduce the amount of energy from nonrenewable sources needed for heating and cooling that building: insulation, replacement burners, replacement high efficiency heating and air conditioning units, including modular boilers and furnaces, water heaters, central air conditioners with or without heat recovery to make hot water for industrial or commercial purposes or in office buildings, and any solar heating or cooling system improvement, including any system which captures solar radiation to heat a fluid which passes over or through the collector element of that system and then transfers that fluid to a point within the system where the heat is withdrawn from the fluid for direct usage or storage. These systems shall include, but not necessarily be limited to, systems incorporating flat plate, evacuated tube or focusing solar collectors.

The foregoing list shall not be construed to be exhaustive, and shall not serve to exclude other improvements consistent with the legislative intent of the provisions of P.L.1983, c.282.

"Urban growth zone" means any area within a municipality receiving State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) or a municipality certified by the Commissioner of Community Affairs

to qualify under such law in every respect except population, which area has been so designated pursuant to an ordinance of the governing body of such municipality.

"District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.).

"Local unit" means a county, municipality, board of education or any other political entity authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law.

"Refunding bonds" means bonds, notes or other obligations issued to refinance bonds previously issued by the authority pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L.2000, c.72 (C.18A:7G-1 et al.).

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

"School facility" means and includes any structure, building or facility used wholly or in part for academic purposes by a district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

2. Section 4 of P.L.1974, c.80 (C.34:1B-4) is amended to read as follows:

C.34:1B-4 "New Jersey Economic Development Authority."

4. a. There is hereby established in, but not of, the Department of the Treasury a public body corporate and politic, with corporate succession, to be known as the "New Jersey Economic Development Authority." The authority is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.) or section 6 of P.L.2001, c.401 (C.34:1B-4.1) shall be deemed and held to be an essential governmental function of the State.

b. The authority shall consist of the Commissioner of Banking and Insurance, the Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, the Commissioner of Labor, the Commissioner of Education, and the State Treasurer, who shall be members ex officio, and eight public members appointed by the Governor as follows: two public members (who shall not be legislators) shall be appointed by the Governor upon recommendation of the Senate President; two public members (who shall not be legislators) shall be appointed by the Governor upon recommendation of the Speaker of the General Assembly; and four public members shall be appointed by the Governor, all for terms of three years. Each member shall hold office for the term of the member's appointment and until the member's successor shall have been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only. In the event the authority shall by resolution determine to accept the declaration of an urban growth zone by any municipality, the mayor or other chief executive officer of such municipality shall ex officio be a member of the authority for the purpose of participating and voting on all matters pertaining to such urban growth zone.

The Governor shall appoint three alternate members of the authority, of which one alternate member (who shall not be a legislator) shall be appointed by the Governor upon the recommendation of the Senate President, and one alternate member (who shall not be a legislator) shall be appointed by the Governor upon the recommendation of the Speaker of the General Assembly; and one alternate member shall be appointed by the Governor, all for terms of three years. The chairperson may authorize an alternate member, in order of appointment, to exercise all of the powers, duties and responsibilities of such member, including, but not limited to, the right to vote on matters before the authority.

Each alternate member shall hold office for the term of the member's appointment and until the member's successor shall have been appointed and qualified. An alternate member shall be eligible for reappointment. Any vacancy in the alternate membership occurring other than by the expiration of a term shall be filled in the same manner as the original appointment but for the unexpired term only. Any reference to a member of the authority in this act shall be deemed to include alternate members unless the context indicates otherwise.

The terms of office of the members and alternate members of the authority appointed by the Governor who are serving on July 18, 2000 shall expire upon the appointment by the Governor of eight public members and

three alternate members. The initial appointments of the eight public members shall be as follows: the two members appointed upon the recommendation of the President of the Senate and the two members appointed upon the recommendation of the Speaker of the General Assembly shall serve terms of three years; two members shall serve terms of two years; and two members shall serve terms of one year. The initial appointments of the alternate members shall be as follows: the alternate member appointed upon the recommendation of the President of the Senate shall serve a term of three years; the alternate member appointed upon the recommendation of the Speaker of the General Assembly shall serve a term of two years; and one alternate member shall serve a term of one year. No member shall be appointed who is holding elective office.

c. Each member appointed by the Governor may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing. Each member before entering upon his duties shall take and subscribe an oath to perform the duties of the office faithfully, impartially and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

d. A chairperson shall be appointed by the Governor from the public members. The members of the authority shall elect from their remaining number a vice chairperson and a treasurer thereof. The authority shall employ an executive director who shall be its secretary and chief executive officer. The powers of the authority shall be vested in the members thereof in office from time to time and seven members 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 thereof by the affirmative vote of at least seven members of the authority. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the authority.

e. Each member of the authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member in such form and amount as may be prescribed by the Director of the Division of Budget and Accounting in the Department of the Treasury. Such bonds shall be filed in the office of the Secretary of State. At all times thereafter the members and treasurer of the authority shall maintain such bonds in full force and effect. All costs of such bonds shall be borne by the authority.

f. The members of the authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no officer or employee of the State shall be deemed to have

forfeited or shall forfeit any office or employment or any benefits or emoluments thereof by reason of the acceptance of the office of ex officio member of the authority or any services therein.

g. Each ex officio member of the authority may designate an officer or employee of the member's department to represent the member at meetings of the authority, and each such designee may lawfully vote and otherwise act on behalf of the member for whom the person constitutes the designee. Any such designation shall be in writing delivered to the authority and shall continue in effect until revoked or amended by writing delivered to the authority.

h. The authority may be dissolved by act of the Legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority, all property, funds and assets thereof shall be vested in the State.

i. A true copy of the minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at such meeting by the authority shall have force or effect until 10 days, Saturdays, Sundays, and public holidays excepted, after the copy of the minutes shall have been so delivered, unless during such 10-day period the Governor shall approve the same in which case such action shall become effective upon such approval. If, in that 10-day period, the Governor returns such copy of the minutes with veto of any action taken by the authority or any member thereof at such meeting, such action shall be null and void and of no effect. The powers conferred in this subsection i. upon the Governor shall be exercised with due regard for the rights of the holders of bonds and notes of the authority at any time outstanding, and nothing in, or done pursuant to, this subsection i. shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the authority to carry out and perform in every detail each and every covenant, agreement or contract at any time made or entered into by or on behalf of the authority with respect to its bonds or notes or for the benefit, protection or security of the holders thereof.

j. On or before March 31 in each year, the authority shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and cause a copy thereof to be filed with the Secretary of State and the Director of the Division of Budget and Accounting in the Department of the Treasury.

k. The Director of the Division of Budget and Accounting in the Department of the Treasury and the director's legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts, books and records of the authority including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating thereto and to its financial standing.

l. No member, officer, employee or agent of the authority shall be interested, either directly or indirectly, in any project or school facilities project, or in any contract, sale, purchase, lease or transfer of real or personal property to which the authority is a party.

3. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

C.34:1B-5 Powers.

5. The authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project or school facilities project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project to municipalities receiving State aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project or the school facilities project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project;

g. To sell, convey or lease to any person all or any portion of a project or school facilities project, for such consideration and upon such terms as the authority may determine to be reasonable;

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, school facilities project or revenues, whenever it shall find such action to be in furtherance of the purposes of this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

i. To grant options to purchase or renew a lease for any of its projects or school facilities projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) and P.L.2000, c.72 (C.18A:7G-1 et al.), with the terms and conditions thereof;

k. In connection with any application for assistance under P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) or P.L.2000, c.72 (C.18A:7G-1 et al.) or commitments therefor, to require and collect such fees and charges as the authority shall determine to be reasonable;

l. To adopt, amend and repeal regulations to carry out the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) and P.L.2000, c.72 (C.18A:7G-1 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) and P.L.2000, c.72 (C.18A:7G-1 et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans

may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) and P.L.2000, c.72 (C.18A:7G-1 et al.), and to fix and pay their compensation from funds available to the authority therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) and P.L.2000, c.72 (C.18A:7G-1 et al.) under, through or by means of its own officers, agents and employees, or by contract with any person;

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

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1) and P.L.2000, c.72 (C.18A:7G-1 et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To undertake school facilities projects and to enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the authority to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L.2000, c.72 (C.18A:7G-1 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

aa. To enter into leases, rentals or other disposition of a real property interest in and of any school facilities project to or from any local unit pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.);

bb. To make and contract to make loans or leases and to make grants to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans or leases, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization,

insurance, operating and other expenses incident to the financing, construction and placing into service and maintenance of school facilities projects; and

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or rescheduled debt of the particular county or public authority for the duration of the loan; except that, whenever the solid waste facility bonds to be refinanced were issued by a public authority and the county solid waste facility was utilized as a regional county solid waste facility, as designated in the respective adopted district solid waste management plans of the participating counties as approved by the department prior to November 10, 1997, and the utilization of the facility was established pursuant to tonnage obligations set forth in their respective interdistrict agreements, the public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of a percentage of the aggregate debt service for the refunded or rescheduled debt of the public authority not to exceed the percentage of the specified tonnage obligation of the host county for the duration of the loan. Whenever the solid waste facility bonds are the obligation of a public authority, the relevant county shall execute a deficiency agreement with the authority, which shall provide that the county pledges to cover any shortfall and to pay deficiencies in scheduled repayment obligations of the public authority. All costs associated with the issuance of bonds pursuant to this subsection may be paid by the authority from the proceeds of these bonds. Any county or public authority is hereby authorized to enter into any agreement with the authority necessary, desirable or convenient to effectuate the provisions of this subsection.

The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31, 2002. The authority may refund its own bonds issued for the purposes herein at any time.

4. Section 9 of P.L.1974, c.80 (C.34:1B-9) is amended to read as follows:

C.34:1B-9 Power to authorize issuance of bonds.

9. For the purpose of providing funds (a) to pay all or any part of the cost of any project or projects, (b) to make loans in accordance with the

provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), and (c) for the funding or refunding any bonds pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) or section 6 of P.L.2001, c.401 (C.34:1B-4.1), the authority shall have power to authorize or provide for the issuance of bonds pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).

5. Section 10 of P.L.1974, c.80 (C.34:1B-10) is amended to read as follows:

C.34:1B-10 Powers of authority by resolution.

10. By resolution, the authority shall have power to incur indebtedness, borrow money and issue its bonds for the purposes stated in section 9 of P.L.1974, c.80 (C.34:1B-9). Except as may otherwise be expressly provided by the authority, or by the provisions of section 6 of P.L.2001, c.401 (C.34:1B-4.1), every issue of its bonds shall be general obligations of the authority payable from any revenues or moneys of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys. Such bonds shall be authorized by resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times not exceeding 40 years from the date thereof, bear interest at a rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the State, and be subject to such terms of redemption (with or without premium) as such resolution may provide. Bonds of the authority may be sold by the authority at public or private sale at such price or prices as the authority shall determine.

C.34:1B-4.1 Contracts to secure bonds, other obligations.

6. a. The New Jersey Economic Development Authority and the State Treasurer are hereby authorized to enter into one or more contracts to secure, in whole or in part, any bonds, refunding bonds or other obligations of the authority issued for the purposes set forth in subsection ee. of section 5 of P.L.1974, c.80 (C.34:1B-5), upon such terms and conditions as are determined by the parties; provided, however, that any obligation of the State incurred under the contract or contracts, including any payments to be made thereunder from the General Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes set forth in subsection ee. of section 5 of P.L.1974, c.80 (C.34:1B-5), as provided by law.

b. In any resolution authorizing the issuance of bonds, refunding bonds or other obligations of the authority issued for the purposes set forth

in subsection ee. of section 5 of P.L.1974, c.80 (C.34:1B-5), the authority may pledge the contract with the State Treasurer, or any part thereof, for the payment or redemption of the bonds or refunding bonds, and covenant as to the use and disposition of money available to the authority for payments of bonds, refunding bonds or other obligations of the authority.

c. The State Treasurer shall pay from the General Fund to the authority in each State fiscal year, in accordance with a contract or contracts between the State Treasurer and the authority, an amount equivalent to the amount due to be paid for debt service incurred in the particular fiscal year on the bonds or refunding bonds of the authority issued pursuant to subsection ee. of section 5 of P.L.1974, c.80 (C.34:1B-5), and any additional costs incurred in connection with any agreements entered into by the authority relating to these bonds or refunding bonds.

d. The provisions of any other law, rule, regulation or order to the contrary notwithstanding, the bonds, refunding bonds or other obligations of the authority issued for the purposes set forth in subsection ee. of section 5 of P.L.1974, c.80 (C.34:1B-5) shall be special and limited obligations of the authority, payable from and secured by such funds and moneys as determined by the authority in accordance with the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.) or section 6 of P.L.2001, c.401 (C.34:1B-4.1), and shall not be in any way a debt or liability of the State or of any political subdivision thereof, except as otherwise provided in this section, and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision thereof, either legal, moral or otherwise, and nothing contained in the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.) or section 6 of P.L.2001, c.401 (C.34:1B-4.1) shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, and all bonds and refunding bonds issued by the authority in connection therewith shall contain on the face thereof a statement to that effect.

7. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 402

AN ACT concerning certain student information posted on the Internet and supplementing chapter 36 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:36-35 Disclosure of certain student information on Internet prohibited without parental consent.

1. The board of education of each school district and the board of trustees of each charter school that establishes an Internet web site, shall not disclose on that web site any personally identifiable information about a student without receiving prior written consent from the student's parent or guardian on a form developed by the Department of Education. The written consent form shall contain a statement concerning the potential dangers of personally identifiable information about individual students on the Internet.

As used in this act, "personally identifiable information" means student names, student photos, student addresses, student e-mail addresses, student phone numbers, and locations and times of class trips.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 403

AN ACT concerning contribution limits by counties and municipalities to volunteer first aid, ambulance and rescue squads and amending R.S.40:5-2.

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

1. R.S.40:5-2 is amended to read as follows:

Contributions to first aid, ambulance and rescue squads.

40:5-2. Any county or municipality may make a voluntary contribution of not more than \$70,000 annually to any duly incorporated first aid and emergency or volunteer ambulance or rescue squad association of the county, or of any municipality therein, rendering service generally throughout the county, or any of the municipalities thereof. In addition, if any such associations experience extraordinary need, the county or municipality may contribute an additional amount of not more than \$35,000.00 annually; provided, however, that the need for such additional funds is established by the association and is directly related to the performance of said association's duties. Whenever the total annual county or municipal contribution to

an association exceeds \$70,000, the chief financial officer of the county or municipality shall receive an audit performed by a certified public accountant or a registered municipal accountant of each association's financial records for the current year which shall certify to the governing body of the county or municipality that such records are being maintained in accordance with sound accounting principles.

Any county or municipality may appropriate such additional sums as it may deem necessary for the purchase of first aid, ambulance, rescue or other emergency vehicles, equipment, supplies and materials for use by these associations, the title to which shall remain with the county or municipality, provided that the funds are controlled and disbursed by the county or municipality.

In the case of a joint purchase made by the governing bodies of two or more local units pursuant to the provisions of the "Consolidated Municipal Services Act," P.L.1952, c.72 (C.40:48B-1 et seq.), the title to the purchase shall be held by the joint meeting formed by the contracting governing bodies.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 404

AN ACT concerning public access to government records, amending and supplementing P.L.1963, c.73 (C.47:1A-1 et seq.), amending P.L.1995, c.23 and P.L.1998, c.17, establishing a Privacy Study Commission and making an appropriation for the expenses thereof, and repealing parts of the statutory law.

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

1. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as follows:

C.47:1A-1 Legislative findings, declarations.

1. The Legislature finds and declares it to be the public policy of this State that:
government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the

protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

2. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read as follows:

C.47:1A-1.1 Definitions.

1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

"Biotechnology" means any technique that uses living organisms, or parts of living organisms, to make or modify products, to improve plants or animals, or to develop micro-organisms for specific uses; including the industrial use of recombinant DNA, cell fusion, and novel bioprocessing techniques.

"Custodian of a government record" or "custodian" means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business 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 in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall

not include inter-agency or intra-agency advisory, consultative, or deliberative material.

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L. 1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;

any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death or in the course of a post mortem examination or autopsy made by or caused to be made by the medical examiner except:

when used in a criminal action or proceeding in this State which relates to the death of that person,

for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,

for use in the field of forensic pathology or for use in medical or scientific education or research, or

for use by any law enforcement agency in this State or any other state or federal law enforcement agency;

criminal investigatory records;

victims' records, except that a victim of a crime shall have access to the victim's own records;

trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure;

any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or

invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege;

administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security;

emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;

security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

information which, if disclosed, would give an advantage to competitors or bidders;

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office;

information which is to be kept confidential pursuant to court order; and

that portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.

A government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential:

pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a

public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;

test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination;

records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication;

valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access;

information contained on individual admission applications; and

information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

"Public agency" or "agency" means 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; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

"Law enforcement agency" means a public agency, or part thereof, determined by the Attorney General to have law enforcement responsibilities.

"Constituent" means any State resident or other person communicating with a member of the Legislature.

"Member of the Legislature" means any person elected or selected to serve in the New Jersey Senate or General Assembly.

"Criminal investigatory record" means a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement

agency which pertains to any criminal investigation or related civil enforcement proceeding.

"Victim's record" means an individually-identifiable file or document held by a victims' rights agency which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records.

"Victim of a crime" means a person who has suffered personal or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime, or if such a person is deceased or incapacitated, a member of that person's immediate family.

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).

3. Section 2 of P.L.1995, c.23 (C.47:1A-1.2) is amended to read as follows:

C.47:1A-1.2 Restricted access to biotechnology trade secrets.

2. a. When federal law or regulation requires the submission of biotechnology trade secrets and related confidential information, a public agency shall not have access to this information except as allowed by federal law.

b. A public agency shall not make any biotechnology trade secrets and related confidential information it has access to under this act available to any other public agency, or to the general public, except as allowed pursuant to federal law.

4. Section 1 of P.L.1998, c.17 (C.47:1A-2.2) is amended to read as follows:

C.47:1A-2.2 Access to certain information by convict prohibited; exceptions.

1. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number,

social security account number, medical history or any other identifying information, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented shall be denied.

b. A government record containing personal identifying information which is protected under the provisions of this section may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.

c. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, or any other law to the contrary, a custodian shall not comply with an anonymous request for a government record which is protected under the provisions of this section.

5. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read as follows:

C.47:1A-3 Access to records of investigation in progress.

3. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;

if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notifica-

tion of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;

if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule;

information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;

information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;

information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and

information as to circumstances surrounding bail, whether it was posted and the amount thereof.

Notwithstanding any other provision of this subsection, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

C.47:1A-5 Times during which records may be inspected, examined, copied; access; copy fees.

6. a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than \$10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any

statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor. Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

b. A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record.

c. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to

accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred.

d. A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

f. The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public agency is required by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, to make the record available; (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied. The

custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce.

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor and shall make arrangements to promptly make available a copy of the record. If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

h. Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.

i. Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be

made available. If the record is not made available by that time, access shall be deemed denied.

j. A custodian shall post prominently in public view in the part or parts of the office or offices of the custodian that are open to or frequented by the public a statement that sets forth in clear, concise and specific terms the right to appeal a denial of, or failure to provide, access to a government record by any person for inspection, examination, or copying or for purchase of copies thereof and the procedure by which an appeal may be filed.

k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.

C.47:1A-6 Proceeding to challenge denial of access to record.

7. A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or

in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c.404 (C.47:1A-7).

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

C.47:1A-7 Government Records Council.

8. a. There is established in the Department of Community Affairs a Government Records Council. The council shall consist of the Commissioner of Community Affairs or the commissioner's designee, the Commissioner of Education or the commissioner's designee, and three public members appointed by the Governor, with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The three public members shall serve during the term of the Governor making the appointment and until the appointment of a successor. A public member shall not hold any other State or local elected or appointed office

or employment while serving as a member of the council. A public member shall not receive a salary for service on the council but shall be reimbursed for reasonable and necessary expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act. A member may be removed by the Governor for cause. Vacancies among the public members shall be filled in the same manner in which the original appointment was made. The members of the council shall choose one of the public members to serve as the council's chair. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it.

b. The Government Records Council shall:

establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;

receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;

issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public;

prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;

prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;

prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;

make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records; and

operate an informational website and a toll-free helpline staffed by knowledgeable employees of the council during regular business hours which shall enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with the council when access has been denied;

In implementing the provisions of subsections d. and e. of this section, the council shall: act, to the maximum extent possible, at the convenience of the parties; utilize teleconferencing, faxing of documents, e-mail and similar forms of modern communication; and when in-person meetings are

necessary, send representatives to meet with the parties at a location convenient to the parties.

c. At the request of the council, a public agency shall produce documents and ensure the attendance of witnesses with respect to the council's investigation of any complaint or the holding of any hearing.

d. Upon receipt of a written complaint signed by any person alleging that a custodian of a government record has improperly denied that person access to a government record, the council shall offer the parties the opportunity to resolve the dispute through mediation. Mediation shall enable a person who has been denied access to a government record and the custodian who denied or failed to provide access thereto to attempt to mediate the dispute through a process whereby a neutral mediator, who shall be trained in mediation selected by the council, acts to encourage and facilitate the resolution of the dispute. Mediation shall be an informal, nonadversarial process having the objective of helping the parties reach a mutually acceptable, voluntary agreement. The mediator shall assist the parties in identifying issues, foster joint problem solving, and explore settlement alternatives.

e. If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. Otherwise, the council shall notify the records custodian against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the custodian wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. The council shall, by a majority vote of its members, render a decision as to whether the record

which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the council may be appealed to the Appellate Division of the Superior Court. A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

f. The council shall not charge any party a fee in regard to actions filed with the council. The council shall be subject to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6), except that the council may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

g. The council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches.

C.47:1A-8 Construction of act.

9. Nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency.

C.47:1A-9 Other laws, regulations, privileges unaffected.

10. a. The provisions of this act, P.L.2001, c.404 (C.47:1A-5 et al.), shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.); any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

b. The provisions of this act, P.L.2001, c.404 (C.47:1A-5 et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of

confidentiality may duly be claimed to restrict public access to a public record or government record.

C.47:1A-10 Personnel, pension records not considered public information; exceptions.

11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

C.47:1A-11 Violations, penalties, disciplinary proceeding.

12. a. A public official, officer, employee or custodian who knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation that occurs within 10 years of an initial violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. This penalty shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

Appropriate disciplinary proceedings may be initiated against a public official, officer, employee or custodian against whom a penalty has been imposed.

C.47:1A-12 Court rules.

13. The New Jersey Supreme Court may adopt such court rules as it deems necessary to effectuate the purposes of this act.

C.47:1A-13 Annual budget request for the council.

14. The Commissioner of Community Affairs shall include in the annual budget request of the Department of Community Affairs a request for sufficient funds to effectuate the purposes of section 8 of P.L.2001, c.404 (C.47:1A-7).

15. a. There is established a temporary Privacy Study Commission which shall consist of 13 members. The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly and the Minority Leader of the General Assembly shall each appoint one public member. The Governor shall appoint nine members and shall designate one of the commission's members to serve as chair of the commission. In making appointments to the commission, legislative leaders and the Governor shall cooperate and coordinate to ensure that the representatives of the following groups and organizations are represented among the commission's membership and that the membership represents a balance between groups which advocate citizen privacy interests and groups which advocate increased access to government records: State and local law enforcement agencies, State and local government officers and employees, attorneys practicing in the field of individual privacy rights, public interest groups with a record of activity with respect to openness in government, crime victim advocates, members of the news media, and at least one retired member of the State Judiciary. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

b. The commission shall organize within 14 days after the appointment of a majority of its members.

c. The commission shall meet at the call of the chair and hold hearings at such places as the chair shall designate during the sessions and recesses of the Legislature. The commission shall comply with the provisions of the "Open Public Meetings Act, P.L.1975, c.231 (C.10:4-6 et seq.).

d. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

e. The commission shall study the privacy issues raised by the collection, processing, use and dissemination of information by public agencies, in light of the recognized need for openness in government and

recommend specific measures, including legislation, the commission may deem appropriate to deal with these issues and safeguard the privacy rights of individuals. In the course of its study, the commission shall review the current and proposed means used for the collection, processing, use and dissemination of information by State and local government agencies.

f. The commission shall report its findings and recommendations to the Governor and the Legislature within 18 months of the effective date of P.L.2001, c.404 (C.47:1A-5 et al.) and may accompany the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

16. There is appropriated \$95,000 from the General Fund to the Privacy Study Commission established pursuant to section 15 of P.L.2001, c.404.

Repealer.

17. Section 2 of P.L.1963, c.73 (C.47:1A-2), section 8 of P.L.1994, c.140 (C.47:1A-2.1) and section 4 of P.L.1963, c.73 (C.47:1A-4) are repealed.

18. Sections 15 and 16 of this act shall take effect immediately and expire upon the date that the Privacy Study Commission submits its report to the Governor and the Legislature and the remainder of the act shall take effect on the 180th day after enactment, except that public agencies may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 8, 2002.

CHAPTER 405

AN ACT concerning the preservation of historic buildings and structures on preserved farmland, amending P.L.1983, c.32, P.L.1988, c.4, and amending and supplementing P.L.1999, c.152.

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

C.13:8C-40.1 Property acquired for farmland preservation of historic buildings, structures; terms defined.

1. a. Notwithstanding any law, rule, or regulation to the contrary, whenever the State, a local government unit, or a qualifying tax exempt nonprofit organization acquires, for farmland preservation purposes using

constitutionally dedicated moneys in whole or in part, the fee simple title to farmland which is to be offered for resale or lease with agricultural deed restrictions as determined by the committee, and there is an historic building or structure located on the farmland, the State, local government unit, or qualifying tax exempt nonprofit organization may, with the approval of the committee:

(1) place a historic preservation restriction on any historic building or structure on the farmland as a condition of the resale or lease of the farmland; or

(2) subdivide the historic building or structure, together with at least enough associated acreage to meet local zoning requirements, from the remaining portion of the farmland, and, after placing a historic preservation restriction upon the historic building or structure, offer the historic building or structure for resale or lease separately from the remaining portion of the farmland.

b. A historic preservation restriction may be placed on any historic building or structure on farmland as provided pursuant to subsection a. of this section even if the proceeds received from the resale or lease of the farmland or the historic building or structure would be less than otherwise would have been realized for use for farmland preservation purposes without the historic preservation restriction in place or the subdivision having been made.

c. For the purposes of this section:

"Historic building or structure" means a building or structure that:

(1) is included, meets the criteria for inclusion, or has been determined to be potentially eligible for inclusion in the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.) or any rules or regulations adopted pursuant thereto;

(2) has been recognized by a county or municipality as a place of historic interest in a county or municipal master plan;

(3) is located in a historic district on a municipal zoning map; or

(4) meets any other criteria which may be adopted by the committee, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), for recognizing the historical value or significance of a building or structure on farmland; and

"Historic preservation restriction" means the same as that term is defined pursuant to section 2 of P.L.1979, c.378 (C.13:8B-2).

C.13:8C-40.2 Demolishing of historic building, structure prohibited, terms defined.

2. a. No historic building or structure located on farmland for which a development easement has been acquired by the State, a local government unit, or a qualifying tax exempt nonprofit organization after one year from

the date of enactment of this act for farmland preservation purposes using constitutionally dedicated moneys in whole or in part may be demolished by the landowner or any other person without the prior approval of the committee.

b. (1) The committee may institute a civil action in a court of competent jurisdiction to prohibit or prevent a violation of this section, and the court may proceed in the action in a summary manner. The committee may also seek damages and other appropriate relief for a violation of this section.

(2) The committee may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations providing for liquidated damages to be paid by the violator to the committee in the event of a violation of this section.

c. For the purposes of this section:

"Historic building or structure" means a building or structure that:

(1) is included in the New Jersey Register of Historic Places established pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.); or

(2) meets any other criteria which may be adopted by the committee, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), for recognizing the historical value or significance of a building or structure on farmland, and which criteria may include but need not be limited to (a) the building or structure having met the criteria for inclusion, or having been determined to be potentially eligible for inclusion, in the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.) or any rules or regulations adopted pursuant thereto; (b) recognition by a county or municipality of the building or structure as a place of historic interest in a county or municipal master plan; or (c) location of the building or structure in a historic district on a municipal zoning map; and

"Historic preservation restriction" means the same as that term is defined pursuant to section 2 of P.L.1979, c.378 (C.13:8B-2).

3. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read as follows:

C.4:1C-31 Development easement purchases.

24. a. Any landowner applying to the board to sell a development easement pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as determined in accordance with the provisions of this act.

b. Any offer shall be reviewed and evaluated by the board and the committee in order to determine the suitability of the land for development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula:

$$\frac{\text{nonagricultural} - \text{agricultural}}{\text{developmental value} \quad \text{value} \quad \text{landowner's asking price}}$$

$$\frac{\text{nonagricultural} - \text{agricultural}}{\text{development value} \quad \text{value}}$$

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L. 1989, c.86 (C.40:55D-113 et seq.), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein where a municipal average has been established

under P.L.1989, c.86 (C.40:55D-113 et seq.), upon receiving an application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowner's offer and, pursuant to the suitability criteria established in subsection b. of this section:

(1) Approve the application to sell the development easement and rank the application in accordance with the criteria established in subsection b. of this section; or

(2) Disapprove the application, stating the reasons therefor.

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

g. Any landowner whose application to sell a development easement has been rejected for any reason other than insufficient funds may not reapply to sell a development easement on the same land within two years of the original application.

h. No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be.

i. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

j. (1) In determining the suitability of land for development easement purchase, the board and the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," assign any such weight it deems appropriate to be given to these factors.

(2) The provisions of paragraph (1) of this subsection may also be applied in determining the suitability of land for fee simple purchase for farmland preservation purposes as authorized by P.L.1983, c.31 (C.4:1C-1 et seq.), P.L.1983, c.32 (C.4:1C-11 et seq.), and P.L.1999, c.152 (C.13:8C-1 et seq.).

(3) (a) For the purposes of paragraph (1) of this subsection: "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 2 of P.L.2001, c.405 (C.13:8C-40.2).

(b) For the purposes of paragraph (2) of this subsection, "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).

4. Section 5 of P.L.1988, c.4 (C.4:1C-31.1) is amended to read as follows:

C.4:1C-31.1 Fee simple absolute purchases.

5. a. Any landowner of farmland within an agricultural development area certified by the committee may apply to the committee to sell the fee simple absolute title at a price which, in the opinion of the landowner, represents a fair market value of the property.

b. The committee shall evaluate the offer to determine the suitability of the land for purchase. Decisions regarding suitability shall be based on the eligibility criteria for the purchase of development easements listed in section 24 of P.L.1983, c.32 (C.4:1C-31) and the criteria adopted by the committee and the board of that county. The committee shall also evaluate the offer taking into account the amount of the asking price, the asking price relative to other offers, the location of the parcel relative to areas targeted within the county by the board and among the counties, and any other criteria as the committee has adopted pursuant to rule or regulation. The committee may negotiate reimbursement with the county and include the anticipated reimbursement as part of the evaluation of an offer.

c. The committee shall rank the offers according to the criteria to determine which, if any, should be appraised. The committee shall reject any offer for the purchase of fee simple absolute title determined unsuitable according to any criterion in this subsection or adopted pursuant to this subsection, or may defer decisions on offers with a low ranking. The committee shall state, in writing, its reasons for rejecting an offer.

d. Appraisals of the parcel shall be conducted to determine the fair market value according to procedures adopted by regulation by the committee.

e. The committee shall notify the landowner of the fair market value and negotiate for the purchase of the title in fee simple absolute.

f. Any land acquired by the committee pursuant to the provisions of this amendatory and supplementary act shall be held of record in the name of the State and shall be offered for resale by the State, notwithstanding any other law, rule or regulation to the contrary, within a reasonable time of its acquisition with agricultural deed restrictions for farmland preservation purposes as determined by the committee pursuant to the provisions of this act.

g. The committee shall be responsible for the operation and maintenance of lands acquired and shall take all reasonable steps to maintain the value of the land and its improvements.

h. To the end that municipalities may not suffer loss of taxes by reason of acquisition and ownership by the State of New Jersey of property under the provisions of this act, the State shall pay annually on October 1 to each municipality in which property is so acquired and has not been resold a sum of money equal to the tax last assessed and last paid by the taxpayer upon this land and the improvement thereon for the taxable year immediately prior to the time of its acquisition. In the event that land acquired by the State pursuant to this act had been assessed at an agricultural and horticultural use valuation in accordance with provisions of the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), at the time of its acquisition by the State, no rollback tax pursuant to section 8 of P.L.1964, c.48 (C.54:4-23.8) shall be imposed as to this land nor shall this rollback tax be applicable in determining the annual payments to be made by the State to the municipality in which this land is located.

All sums of money received by the respective municipalities as compensation for loss of tax revenue pursuant to this section shall be applied to the same purposes as is the tax revenue from the assessment and collection of taxes on real property of these municipalities, and to accomplish this end the sums shall be apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt.

5. Section 39 of P.L.1999, c.152 (C.13:8C-39) is amended to read as follows:

C.13:8C-39 Grant to qualifying tax exempt nonprofit organization for farmland.

39. a. The committee may provide a grant to a qualifying tax exempt nonprofit organization for up to 50% of the cost of acquisition of (1) a development easement on farmland, provided that the terms of any such development easement shall be approved by the committee, or (2) fee simple title to farmland, which shall be offered for resale or lease with an agricultural deed restriction, as determined by the committee, and any

proceeds received from a resale shall be dedicated for farmland preservation purposes and the State's pro rata share of any such proceeds shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund.

b. The value of a development easement or fee simple title shall be established by two appraisals conducted on each parcel and certified by the committee. The appraisals shall be conducted by independent professional appraisers selected by the qualifying tax exempt nonprofit organization and approved by the committee from among members of recognized organizations of real estate appraisers.

c. The appraisals shall determine the fair market value of the fee simple title to the parcel, as well as the fair market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the parcel for nonagricultural purposes, which shall be the value of the development easement.

d. Any grant provided to a qualifying tax exempt nonprofit organization pursuant to this section shall not exceed 50% of the appraised value of the development easement, or of the fee simple title in the case of fee simple acquisitions, plus up to 50% of any costs incurred including but not limited to the costs of surveys, appraisals, and title insurance.

e. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

f. To qualify to receive a grant pursuant to this section, the applicant shall:

(1) demonstrate that it has the resources to match the grant requested; and

(2) in the case of the acquisition of a development easement, agree not to convey the development easement except to the federal government, the State, a local government unit, or another qualifying tax exempt nonprofit organization, for farmland preservation purposes.

g. (1) In deciding whether to award a grant to a qualifying tax exempt nonprofit organization pursuant to this section, the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," assign any such weight it deems appropriate to be given to these factors.

(2) For the purposes of this subsection: "historic building or structure," in the context of the grant program for qualifying tax exempt nonprofit organizations to acquire development easements on farmland for farmland preservation purposes, means the same as that term is defined pursuant to subsection c. of section 2 of P.L.2001, c.405 (C.13:8C-40.2); and "historic building or structure," in the context of the grant program for qualifying tax exempt nonprofit organizations to acquire fee simple titles to farmland for farmland preservation purposes, means the same as that term is defined pursuant to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).

6. Section 40 of P.L.1999, c.152 (C.13:8C-40) is amended to read as follows:

C.13:8C-40 Acquisition, permanent retirement of development easements on farmland.

40. a. The committee may acquire and permanently retire development easements on farmland.

b. The committee shall evaluate the suitability of the acquisition of a development easement based upon the eligibility criteria listed in section 24 of P.L.1983, c.32 (C.4:1C-31) and any other criteria that may be adopted by the committee.

c. Appraisals to determine the fair market value of a development easement to be acquired by the committee shall be conducted by appraisers approved by the committee and in a manner consistent with the process set forth in subsection c. of section 24 of P.L.1983, c.32 (C.4:1C-31).

d. Any development easement acquired by the committee shall be held of record in the name of the committee.

7. This act shall take effect on the 180th day after the date of enactment, but the State Agriculture Development Committee may take such anticipatory administrative action in advance thereof as may be necessary for the implementation of this act.

Approved January 8, 2002.

CHAPTER 406

AN ACT concerning an annual report on the school-based probation program 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:12-5.1 Findings, declarations relative to school-based probation.

1. The Legislature finds and declares that:
 - a. School-based probation is an approach to the supervision of children which shifts the primary location of probation operations to the school environment;
 - b. School-based probation is designed to provide closer monitoring of a juvenile's behavior in order to improve school attendance and academic performance, lower school drop-out rates and reduce recidivism and out-of-home placements resulting from delinquent behaviors;
 - c. School-based probation programs have stimulated much interest and enthusiasm because they are believed to enhance both the school environment and probation services;
 - d. Studies that have been conducted on the program are very encouraging and have shown that children who have been assigned to school-based probation are more likely to be in the community longer prior to their first charge after their assignment to probation and are also more likely to be charged with probation violation and status offenses rather than new charges of a more serious nature;
 - e. Children who have been assigned to school-based probation tend not to "penetrate" the juvenile justice system as deeply as do children who are assigned to more traditional forms of supervision, resulting in not only cost savings, but also reductions in the destructive effects of extended placements and involvement in the more restrictive components of the juvenile justice system;
 - f. Various models of school-based probation have been implemented in many counties of this State, each designed to address the particular needs of the individual county or school district; and
 - g. The Legislature would benefit from input by probation departments currently involved in school-based probation and the school districts with which they are in partnership on their evaluation of the program and any recommendations regarding the expansion and replication of the program throughout the State.

C.2A:12-5.2 Annual report to Legislature.

2. a. The Administrative Director of the Courts, in consultation with the Commissioner of Education, shall submit an annual report to the Legislature evaluating the effectiveness of the school-based probation program. The report shall include, but need not be limited to: information on the cost-effectiveness of the program as compared to the more traditional model of juvenile probation; the methods by which the confidentiality of the child involved in the program has been protected and any information-sharing protocols which have been developed between school and probation staff;

information on the impact of the program in such areas as drop-out rates, disciplinary referrals, tardiness, absenteeism and academic performance; recommendations as to the preferred model or models of school-based probation to implement on a Statewide basis or any specific parameters of the program that should be mandated; and any other recommendations regarding the expansion of the program.

b. For the purposes of compiling the report required pursuant to subsection a. of this section, the Administrative Director of the Courts shall have access to the pupil record of any child who has been assigned to school-based probation. Information which is provided to the Administrative Director of the Courts pursuant to this subsection regarding a student who has been assigned to school-based probation shall be used under strict conditions of anonymity and confidentiality.

No liability shall attach to any member, officer or employee of any board of education for the furnishing of any pupil records pursuant to this subsection.

3. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 407

AN ACT concerning juveniles charged with delinquency and amending P.L.1982, c.79 and P.L.1985, c.249.

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

1. Section 1 of P.L.1982, c.79 (C.2A:4A-60) is amended to read as follows:

C.2A:4A-60 Disclosure of juvenile information; penalties for disclosure.

1. Disclosure of juvenile information; penalties for disclosure.

a. Social, medical, psychological, legal and other records of the court and probation division, and records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection. Such records shall be made available only to:

- (1) Any court or probation division;
- (2) The Attorney General or county prosecutor;

- (3) The parents or guardian and to the attorney of the juvenile;
- (4) The Department of Human Services, if providing care or custody of the juvenile;
- (5) Any institution or facility to which the juvenile is currently committed or in which the juvenile is placed;
- (6) Any person or agency interested in a case or in the work of the agency keeping the records, by order of the court for good cause shown, except that information concerning adjudications of delinquency, records of custodial confinement, payments owed on assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution ordered following conviction of a crime or adjudication of delinquency, and the juvenile's financial resources, shall be made available upon request to the Victims of Crime Compensation Board established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3), which shall keep such information and records confidential;
- (7) The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170);
- (8) Law enforcement agencies for the purpose of reviewing applications for a permit to purchase a handgun or firearms purchaser identification card;
- (9) Any potential party in a subsequent civil action for damages related to an act of delinquency committed by a juvenile, including the victim or a member of the victim's immediate family, regardless of whether the action has been filed against the juvenile; provided, however, that records available under this paragraph shall be limited to official court documents, such as complaints, pleadings and orders, and that such records may be disclosed by the recipient only in connection with asserting legal claims or obtaining indemnification on behalf of the victim or the victim's family and otherwise shall be safeguarded from disclosure to other members of the public. Any potential party in a civil action related to the juvenile offense may file a motion with the civil trial judge seeking to have the juvenile's social, medical or psychological records admitted into evidence in a civil proceeding for damages; and
- (10) Any potential party in a subsequent civil action for damages related to an act of delinquency committed by a juvenile, including the victim or a member of the victim's immediate family, regardless of whether the action has been filed against the juvenile; provided, however, that records available under this paragraph shall be limited to police or investigation reports concerning acts of delinquency, which shall be disclosed by a law enforcement agency only with the approval of the County Prosecutor's Office or the Division of Criminal Justice. Prior to disclosure, all personal information regarding all individuals, other than the requesting party and the

arresting or investigating officer, shall be redacted. Such records may be disclosed by the recipient only in connection with asserting legal claims or obtaining indemnification on behalf of the victim or the victim's family, and otherwise shall be safeguarded from disclosure to other members of the public.

b. Records of law enforcement agencies may be disclosed for law enforcement purposes, or for the purpose of reviewing applications for a permit to purchase a handgun or a firearms purchaser identification card to any law enforcement agency of this State, another state or the United States, and the identity of a juvenile under warrant for arrest for commission of an act that would constitute a crime if committed by an adult may be disclosed to the public when necessary to execution of the warrant.

c. At the time of charge, adjudication or disposition, information as to the identity of a juvenile charged with an offense, the offense charged, the adjudication and disposition shall, upon request, be disclosed to:

- (1) The victim or a member of the victim's immediate family;
- (2) Any law enforcement agency which investigated the offense, the person or agency which filed the complaint, and any law enforcement agency in the municipality where the juvenile resides; and
- (3) On a confidential basis, the principal of the school where the juvenile is enrolled for use by the principal and such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or to planning programs relevant to the juvenile's educational and social development, provided that no record of such information shall be maintained except as authorized by regulation of the Department of Education; or
- (4) A party in a subsequent legal proceeding involving the juvenile, upon approval by the court.

d. A law enforcement or prosecuting agency shall, at the time of a charge, adjudication or disposition, advise the principal of the school where the juvenile is enrolled of the identity of the juvenile charged, the offense charged, the adjudication and the disposition if:

- (1) The offense occurred on school property or a school bus, occurred at a school-sponsored function or was committed against an employee or official of the school; or
- (2) The juvenile was taken into custody as a result of information or evidence provided by school officials; or
- (3) The offense, if committed by an adult, would constitute a crime, and the offense:
 - (a) resulted in death or serious bodily injury or involved an attempt or conspiracy to cause death or serious bodily injury; or

(b) involved the unlawful use or possession of a firearm or other weapon; or

(c) involved the unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog; or

(d) was committed by a juvenile who acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity; or

(e) would be a crime of the first or second degree.

Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to a juvenile's educational and social development, and no record of such information shall be maintained except as authorized by regulation of the Department of Education.

e. Nothing in this section prohibits a law enforcement or prosecuting agency from providing the principal of a school with information identifying one or more juveniles who are under investigation or have been taken into custody for commission of any act that would constitute an offense if committed by an adult when the law enforcement or prosecuting agency determines that the information may be useful to the principal in maintaining order, safety or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to the juvenile's educational and social development. No information provided pursuant to this section shall be maintained.

f. Information as to the identity of a juvenile adjudicated delinquent, the offense, the adjudication and the disposition shall be disclosed to the public where the offense for which the juvenile has been adjudicated delinquent if committed by an adult, would constitute a crime of the first, second or third degree, or aggravated assault, destruction or damage to property to an extent of more than \$500.00, unless upon application at the time of disposition the juvenile demonstrates a substantial likelihood that specific and extraordinary harm would result from such disclosure in the specific case. Where the court finds that disclosure would be harmful to the juvenile, the reasons therefor shall be stated on the record.

g. (1) Nothing in this section shall prohibit the establishment and maintaining of a central registry of the records of law enforcement agencies

relating to juveniles for the purpose of exchange between State and local law enforcement agencies and prosecutors of this State, another state, or the United States. These records of law enforcement agencies shall be available on a 24-hour basis.

(2) Certain information and records relating to juveniles in the central registry maintained by the courts shall be available to State and local law enforcement agencies and prosecutors on a 24-hour basis.

h. Whoever, except as provided by law, knowingly discloses, publishes, receives, or makes use of or knowingly permits the unauthorized use of information concerning a particular juvenile derived from records listed in subsection a. or acquired in the course of court proceedings, probation, or police duties, shall, upon conviction thereof, be guilty of a disorderly persons offense.

i. Juvenile delinquency proceedings.

(1) Except as provided in paragraph (2) of this subsection, the court may, upon application by the juvenile or his parent or guardian, the prosecutor or any other interested party, including the victim or complainant or members of the news media, permit public attendance during any court proceeding at a delinquency case, where it determines that a substantial likelihood that specific harm to the juvenile would not result. The court shall have the authority to limit and control attendance in any manner and to the extent it deems appropriate;

(2) The court or, in cases where the county prosecutor has entered an appearance, the county prosecutor shall notify the victim or a member of the victim's immediate family of any court proceeding involving the juvenile and the court shall permit the attendance of the victim or family member at the proceeding except when, prior to completing testimony as a witness, the victim or family member is properly sequestered in accordance with the law or the Rules Governing the Courts of the State of New Jersey or when the juvenile or the juvenile's family member shows, by clear and convincing evidence, that such attendance would result in a substantial likelihood that specific harm to the juvenile would result from the attendance of the victim or a family member at a proceeding or any portion of a proceeding and that such harm substantially outweighs the interest of the victim or family member to attend that portion of the proceeding;

(3) The court shall permit a victim, or a family member of a victim to make a statement prior to ordering a disposition in any delinquency proceeding involving an offense that would constitute a crime if committed by an adult.

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

creation, maintenance and disclosure of pupil records including information acquired pursuant to this section.

2. Section 4 of P.L.1985, c.249 (C.52:4B-37) is amended to read as follows:

C.52:4B-37 "Victim" defined.

4. As used in this act, "victim" means a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed by an adult or an act of delinquency that would constitute a crime if committed by an adult, committed against that person. "Victim" also includes the nearest relative of the victim of a criminal homicide.

3. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 408

AN ACT incorporating balanced and restorative justice principles into the juvenile justice system and amending P.L.1982, c.77, P.L.1982, c.81 and P.L.1995, c.284.

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

1. Section 2 of P.L.1982, c.77 (C.2A:4A-21) is amended to read as follows:

C.2A:4A-21 Purposes.

2. Purposes. This act shall be construed so as to effectuate the following purposes:

a. To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of juveniles coming within the provisions of this act;

b. Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public;

c. To separate juveniles from the family environment only when necessary for their health, safety or welfare or in the interests of public safety;

d. To secure for each child coming under the jurisdiction of the court such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the State; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents;

e. To insure that children under the jurisdiction of the court are wards of the State, subject to the discipline and entitled to the protection of the State, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them; and

f. Consistent with the protection of the public interest, to insure that any services and sanctions for juveniles provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community and the development of competencies to enable children to become responsible and productive members of the community.

2. Section 23 of P.L.1982, c.77 (C.2A:4A-42) is amended to read as follows:

C.2A:4A-42 Predispositional evaluation.

23. Predispositional evaluation. a. Before making a disposition, the court may refer the juvenile to an appropriate individual, agency or institution for examination and evaluation.

b. In arriving at a disposition, the court may also consult with such individuals and agencies as may be appropriate to the juvenile's situation, including the county probation division, the Division of Youth and Family Services, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), the county youth services commission, school personnel, clergy, law enforcement authorities, family members and other interested and knowledgeable parties. In so doing, the court may convene a predispositional conference to discuss and recommend disposition.

c. The predisposition report ordered pursuant to the Rules of Court may include a statement by the victim of the offense for which the juvenile has been adjudicated delinquent or by the nearest relative of a homicide victim. 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 division shall notify the victim or nearest relative of a homicide victim of his right to make a statement for inclusion in the predisposition report if the victim or relative so desires. Any statement shall be made within 20 days of notification by the probation division. The report shall further include information on the financial resources of the juvenile. This information shall be made available on request to the Victims of Crime Compensation Board established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3) or to any officer authorized under section 3 of P.L.1979, c.396 (C.2C:46-4) to collect payment of an assessment, restitution or fine. Any predisposition report prepared pursuant to this section shall include an analysis of the circumstances attending the commission of the act, the impact of the offense on the community, the offender's history of delinquency or criminality, family situation, financial resources, the financial resources of the juvenile's parent or guardian, and information concerning the parent or guardian's exercise of supervision and control relevant to commission of the act.

Information concerning financial resources included in the report shall be made available to any officer authorized to collect payment on any assessment, restitution or fine.

3. Section 24 of P.L.1982, c.77 (C.2A:4A-43) is amended to read as follows:

C.2A:4A-43 Disposition of delinquency cases.

24. Disposition of delinquency cases. a. In determining the appropriate disposition for a juvenile adjudicated delinquent the court shall weigh the following factors:

- (1) The nature and circumstances of the offense;
- (2) The degree of injury to persons or damage to property caused by the juvenile's offense;
- (3) The juvenile's age, previous record, prior social service received and out-of-home placement history;
- (4) Whether the disposition supports family strength, responsibility and unity and the well-being and physical safety of the juvenile;
- (5) Whether the disposition provides for reasonable participation by the child's parent, guardian, or custodian, provided, however, that the failure of a parent or parents to cooperate in the disposition shall not be weighed against the juvenile in arriving at an appropriate disposition;
- (6) Whether the disposition recognizes and treats the unique physical, psychological and social characteristics and needs of the child;
- (7) Whether the disposition contributes to the developmental needs of the child, including the academic and social needs of the child where the child has mental retardation or learning disabilities;

- (8) Any other circumstances related to the offense and the juvenile's social history as deemed appropriate by the court;
- (9) The impact of the offense on the victim or victims;
- (10) The impact of the offense on the community; and
- (11) The threat to the safety of the public or any individual posed by the child.

b. If a juvenile is adjudged delinquent, and except to the extent that an additional specific disposition is required pursuant to subsection e. or f. of this section, the court may order incarceration pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) or any one or more of the following dispositions:

(1) Adjourn formal entry of disposition of the case for a period not to exceed 12 months for the purpose of determining whether the juvenile makes a satisfactory adjustment, and if during the period of continuance the juvenile makes such an adjustment, dismiss the complaint; provided that if the court adjourns formal entry of disposition of delinquency for a violation of an offense defined in chapter 35 or 36 of Title 2C of the New Jersey Statutes the court shall assess the mandatory penalty set forth in N.J.S.2C:35-15 but may waive imposition of the penalty set forth in N.J.S.2C:35-16 for juveniles adjudicated delinquent;

(2) Release the juvenile to the supervision of the juvenile's parent or guardian;

(3) Place the juvenile on probation to the chief probation officer of the county or to any other suitable person who agrees to accept the duty of probation supervision for a period not to exceed three years upon such written conditions as the court deems will aid rehabilitation of the juvenile;

(4) Transfer custody of the juvenile to any relative or other person determined by the court to be qualified to care for the juvenile;

(5) Place the juvenile under the care of the Department of Human Services under the responsibility of the Division of Youth and Family Services pursuant to P.L.1951, c.138 (C.30:4C-1 et seq.) for the purpose of providing services in or out of the home. Within 14 days, unless for good cause shown, but not later than 30 days, the Department of Human Services shall submit to the court a service plan, which shall be presumed valid, detailing the specifics of any disposition order. The plan shall be developed within the limits of fiscal and other resources available to the department. If the court determines that the service plan is inappropriate, given existing resources, the department may request a hearing on that determination;

(6) Place the juvenile under the care and custody of the Commissioner of the Department of Human Services for the purpose of receiving the services of the Division of Developmental Disabilities of that department,

provided that the juvenile has been determined to be eligible for those services under P.L.1965, c.59, s.16 (C.30:4-25.4);

(7) Commit the juvenile, pursuant to applicable laws and the Rules of Court governing civil commitment, to the Department of Human Services under the responsibility of the Division of Mental Health Services for the purpose of placement in a suitable public or private hospital or other residential facility for the treatment of persons who are mentally ill, on the ground that the juvenile is in need of involuntary commitment;

(8) Fine the juvenile an amount not to exceed the maximum provided by law for such a crime or offense if committed by an adult and which is consistent with the juvenile's income or ability to pay and financial responsibility to the juvenile's family, provided that the fine is specially adapted to the rehabilitation of the juvenile or to the deterrence of the type of crime or offense. If the fine is not paid due to financial limitations, the fine may be satisfied by requiring the juvenile to submit to any other appropriate disposition provided for in this section;

(9) Order the juvenile to make restitution to a person or entity who has suffered loss resulting from personal injuries or damage to property as a result of the offense for which the juvenile has been adjudicated delinquent. The court may determine the reasonable amount, terms and conditions of restitution. If the juvenile participated in the offense with other persons, the participants shall be jointly and severally responsible for the payment of restitution. The court shall not require a juvenile to make full or partial restitution if the juvenile reasonably satisfies the court that the juvenile does not have the means to make restitution and could not reasonably acquire the means to pay restitution;

(10) Order that the juvenile perform community services under the supervision of a probation division or other agency or individual deemed appropriate by the court. Such services shall be compulsory and reasonable in terms of nature and duration. Such services may be performed without compensation, provided that any money earned by the juvenile from the performance of community services may be applied towards any payment of restitution or fine which the court has ordered the juvenile to pay;

(11) Order that the juvenile participate in work programs which are designed to provide job skills and specific employment training to enhance the employability of job participants. Such programs may be without compensation, provided that any money earned by the juvenile from participation in a work program may be applied towards any payment of restitution or fine which the court has ordered the juvenile to pay;

(12) Order that the juvenile participate in programs emphasizing self-reliance, such as intensive outdoor programs teaching survival skills, including but not limited to camping, hiking and other appropriate activities;

(13) Order that the juvenile participate in a program of academic or vocational education or counseling, such as a youth service bureau, requiring attendance at sessions designed to afford access to opportunities for normal growth and development. This may require attendance after school, evenings and weekends;

(14) Place the juvenile in a suitable residential or nonresidential program for the treatment of alcohol or narcotic abuse, provided that the juvenile has been determined to be in need of such services;

(15) Order the parent or guardian of the juvenile to participate in appropriate programs or services when the court has found either that such person's omission or conduct was a significant contributing factor towards the commission of the delinquent act, or, under its authority to enforce litigant's rights, that such person's omission or conduct has been a significant contributing factor towards the ineffective implementation of a court order previously entered in relation to the juvenile;

(16) (a) Place the juvenile in a nonresidential program operated by a public or private agency, providing intensive services to juveniles for specified hours, which may include education, counseling to the juvenile and the juvenile's family if appropriate, vocational training, employment counseling, work or other services;

(b) Place the juvenile under the custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) for placement with any private group home or private residential facility with which the commission has entered into a purchase of service contract;

(17) 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 juvenile who used a motor vehicle in the course of committing an act for which the juvenile was adjudicated delinquent. In imposing this disposition and in deciding the duration of the postponement, suspension, or revocation, the court shall consider the severity of the delinquent act and the potential effect of the loss of driving privileges on the juvenile's ability to be rehabilitated. Any postponement, suspension, or revocation shall be imposed consecutively with any custodial commitment;

(18) Order that the juvenile satisfy any other conditions reasonably related to the rehabilitation of the juvenile;

(19) Order a parent or guardian who has failed or neglected to exercise reasonable supervision or control of a juvenile who has been adjudicated delinquent to make restitution to any person or entity who has suffered a loss as a result of that offense. The court may determine the reasonable amount, terms and conditions of restitution; or

(20) Place the juvenile, if eligible, in an appropriate juvenile offender program established pursuant to P.L.1997, c.81 (C.30:8-61 et al.).

c. (1) Except as otherwise provided in subsections e. and f. of this section, if the county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Juvenile Justice Commission, the court may, in addition to any of the dispositions not involving placement out of the home enumerated in this section, incarcerate the juvenile in the youth detention facility in that county for a term not to exceed 60 consecutive days. Counties which do not operate their own juvenile detention facilities may contract for the use of approved commitment programs with counties with which they have established agreements for the use of pre-disposition juvenile detention facilities. The Juvenile Justice Commission shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for the use of juvenile detention facilities pursuant to this subsection.

(2) No juvenile may be incarcerated in any county detention facility unless the county has entered into an agreement with the Juvenile Justice Commission concerning the use of the facility for sentenced juveniles. Upon agreement with the county, the Juvenile Justice Commission shall certify detention facilities which may receive juveniles sentenced pursuant to this subsection and shall specify the capacity of the facility that may be made available to receive such juveniles; provided, however, that in no event shall the number of juveniles incarcerated pursuant to this subsection exceed 50% of the maximum capacity of the facility.

(3) The court may fix a term of incarceration under this subsection where:

(a) The act for which the juvenile was adjudicated delinquent, if committed by an adult, would have constituted a crime or repetitive disorderly persons offense;

(b) Incarceration of the juvenile is consistent with the goals of public safety, accountability and rehabilitation and the court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors as set forth in section 25 of P.L.1982, c.77 (C.2A:4A-44); and

(c) The detention facility has been certified for admission of adjudicated juveniles pursuant to paragraph (2).

(4) If as a result of incarceration of adjudicated juveniles pursuant to this subsection, a county is required to transport a predisposition juvenile to a juvenile detention facility in another county, the costs of such transportation shall be borne by the Juvenile Justice Commission.

d. Whenever the court imposes a disposition upon an adjudicated delinquent which requires the juvenile to perform a community service, restitution, or to participate in any other program provided for in this section other than subsection c., the duration of the juvenile's mandatory participation in such alternative programs shall extend for a period consistent with the program goal for the juvenile and shall in no event exceed one year beyond the maximum duration permissible for the delinquent if the juvenile had been committed to a term of incarceration.

e. In addition to any disposition the court may impose pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44), the following orders shall be included in dispositions of the adjudications set forth below:

(1) An order of incarceration for a term of the duration authorized pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44) or an order to perform community service pursuant to paragraph (10) of subsection b. of this section for a period of at least 60 days, if the juvenile has been adjudicated delinquent for an act which, if committed by an adult, would constitute the crime of theft of a motor vehicle, or the crime of unlawful taking of a motor vehicle in violation of subsection c. of N.J.S.2C:20-10, or the third degree crime of eluding in violation of subsection b. of N.J.S.2C:29-2;

(2) An order of incarceration for a term of the duration authorized pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44) which shall include a minimum term of 60 days during which the juvenile shall be ineligible for parole, if the juvenile has been adjudicated delinquent for an act which, if committed by an adult, would constitute the crime of aggravated assault in violation of paragraph (6) of subsection b. of N.J.S.2C:12-1, the second degree crime of eluding in violation of subsection b. of N.J.S.2C:29-2, or theft of a motor vehicle, in a case in which the juvenile has previously been adjudicated delinquent for an act, which if committed by an adult, would constitute unlawful taking of a motor vehicle or theft of a motor vehicle;

(3) An order to perform community service pursuant to paragraph (10) of subsection b. of this section for a period of at least 30 days, if the juvenile has been adjudicated delinquent for an act which, if committed by an adult, would constitute the fourth degree crime of unlawful taking of a motor vehicle in violation of subsection b. of N.J.S.2C:20-10;

(4) An order of incarceration for a term of the duration authorized pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44) which shall include a minimum term of 30 days during which the juvenile shall be ineligible for parole, if the juvenile has been adjudicated delinquent for an act which, if committed by an adult, would constitute the crime of unlawful taking of a motor vehicle in violation of N.J.S.2C:20-10 or the third degree

crime of eluding in violation of subsection b. of N.J.S.2C:29-2, and if the juvenile has previously been adjudicated delinquent for an act which, if committed by an adult, would constitute either theft of a motor vehicle, the unlawful taking of a motor vehicle or eluding.

f. (1) The minimum terms of incarceration required pursuant to subsection e. of this section shall be imposed regardless of the weight or balance of factors set forth in this section or in section 25 of P.L.1982, c.77 (C.2A:4A-44), but the weight and balance of those factors shall determine the length of the term of incarceration appropriate, if any, beyond any mandatory minimum term required pursuant to subsection e. of this section.

(2) When a court in a county that does not have a juvenile detention facility or a contractual relationship permitting incarceration pursuant to subsection c. of this section is required to impose a term of incarceration pursuant to subsection e. of this section, the court may, subject to limitations on commitment to State correctional facilities of juveniles who are under the age of 11 or developmentally disabled, set a term of incarceration consistent with subsection c. which shall be served in a State correctional facility. When a juvenile who because of age or developmental disability cannot be committed to a State correctional facility or cannot be incarcerated in a county facility, the court shall order a disposition appropriate as an alternative to any incarceration required pursuant to subsection e.

(3) For purposes of subsection e. of this section, in the event that a "boot camp" program for juvenile offenders should be developed and is available, a term of commitment to such a program shall be considered a term of incarceration.

g. Whenever the court imposes a disposition upon an adjudicated delinquent which requires the juvenile to perform a community service, restitution, or to participate in any other program provided for in this section, the order shall include provisions which provide balanced attention to the protection of the community, accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community and the development of competencies to enable the child to become a responsible and productive member of the community.

4. Section 25 of P.L.1982, c.77 (C.2A:4A-44) is amended to read as follows:

C.2A:4A-44 Incarceration -- aggravating and mitigating factors.

25. Incarceration--Aggravating and mitigating factors.

a. (1) Except as provided in subsections e. and f. of section 24 of P.L.1982, c.77 (C.2A:4A-43), in determining whether incarceration is an appropriate disposition, the court shall consider the following aggravating circumstances:

(a) The fact that the nature and circumstances of the act, and the role of the juvenile therein, was committed in an especially heinous, cruel, or depraved manner;

(b) The fact that there was grave and serious harm inflicted on the victim and that based upon the juvenile's age or mental capacity the juvenile knew or reasonably should have known that the victim 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;

(c) The character and attitude of the juvenile indicate that the juvenile is likely to commit another delinquent or criminal act;

(d) The juvenile's prior record and the seriousness of any acts for which the juvenile has been adjudicated delinquent;

(e) The fact that the juvenile committed the act pursuant to an agreement that the juvenile either pay or be paid for the commission of the act and that the pecuniary incentive was beyond that inherent in the act itself;

(f) The fact that the juvenile committed the act against a policeman or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority, or the juvenile committed the act because of the status of the victim as a public servant;

(g) The need for deterring the juvenile and others from violating the law;

(h) The fact that the juvenile knowingly conspired with others as an organizer, supervisor, or manager to commit continuing criminal activity in concert with two or more persons and the circumstances of the crime show that he has knowingly devoted himself to criminal activity as part of an ongoing business activity;

(i) The fact that the juvenile on two separate occasions was adjudged a delinquent on the basis of acts which if committed by an adult would constitute crimes;

(j) The impact of the offense on the victim or victims;

(k) The impact of the offense on the community; and

(l) The threat to the safety of the public or any individual posed by the child.

(2) In determining whether incarceration is an appropriate disposition the court shall consider the following mitigating circumstances:

(a) The child is under the age of 14;

(b) The juvenile's conduct neither caused nor threatened serious harm;

(c) The juvenile did not contemplate that the juvenile's conduct would cause or threaten serious harm;

- (d) The juvenile acted under a strong provocation;
 - (e) There were substantial grounds tending to excuse or justify the juvenile's conduct, though failing to establish a defense;
 - (f) The victim of the juvenile's conduct induced or facilitated its commission;
 - (g) The juvenile has compensated or will compensate the victim for the damage or injury that the victim has sustained, or will participate in a program of community service;
 - (h) The juvenile has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present act;
 - (i) The juvenile's conduct was the result of circumstances unlikely to recur;
 - (j) The character and attitude of the juvenile indicate that the juvenile is unlikely to commit another delinquent or criminal act;
 - (k) The juvenile is particularly likely to respond affirmatively to noncustodial treatment;
 - (l) The separation of the juvenile from the juvenile's family by incarceration of the juvenile would entail excessive hardship to the juvenile or the juvenile's family;
 - (m) The willingness of the juvenile to cooperate with law enforcement authorities;
 - (n) The conduct of the juvenile was substantially influenced by another person more mature than the juvenile.
- b. (1) There shall be a presumption of nonincarceration for any crime or offense of the fourth degree or less committed by a juvenile who has not previously been adjudicated delinquent or convicted of a crime or offense.
- (2) Where incarceration is imposed, the court shall consider the juvenile's eligibility for release under the law governing parole.
- c. The following juveniles shall not be committed to a State juvenile facility:
- (1) Juveniles age 11 or under unless adjudicated delinquent for the crime of arson or a crime which, if committed by an adult, would be a crime of the first or second degree; and
 - (2) Juveniles who are developmentally disabled as defined in paragraph (1) of subsection a. of section 3 of P.L. 1977, c.82 (C.30:6D-3).
- d. (1) When the court determines that, based on the consideration of all the factors set forth in subsection a., the juvenile shall be incarcerated, unless it orders the incarceration pursuant to subsection c. of section 24 of P.L. 1982, c.77 (C.2A:4A-43), it shall state on the record the reasons for imposing incarceration, including any findings with regard to these factors, and commit the juvenile to the custody of the Juvenile Justice Commission

which shall provide for the juvenile's placement in a suitable juvenile facility pursuant to the conditions set forth in this subsection and for terms not to exceed the maximum terms as provided herein for what would constitute the following crimes if committed by an adult:

- (a) Murder under 2C:11-3a(1) or (2) 20 years
- (b) Murder under 2C:11-3a(3) 10 years
- (c) Crime of the first degree, except murder 4 years
- (d) Crime of the second degree 3 years
- (e) Crime of the third degree 2 years
- (f) Crime of the fourth degree 1 year
- (g) Disorderly persons offense 6 months

(2) Except as provided in subsection e. of section 24 of P.L.1982, c.77 (C.2A:4A-43), the period of confinement shall continue until the appropriate paroling authority determines that such a person should be paroled; except that in no case shall the period of confinement and parole exceed the maximum provided by law for such offense. However, if a juvenile is approved for parole prior to serving one-third of any term imposed for any crime of the first, second or third degree, including any extended term imposed pursuant to paragraph (3) or (4) of this subsection, or one-fourth of any term imposed for any other crime the granting of parole shall be subject to approval of the sentencing court. Prior to approving parole, the court shall give the prosecuting attorney notice and an opportunity to be heard. If the court denies the parole of a juvenile pursuant to this paragraph it shall state its reasons in writing and notify the parole board, the juvenile and the juvenile's attorney. The court shall have 30 days from the date of notice of the pending parole to exercise the power granted under this paragraph. If the court does not respond within that time period, the parole will be deemed approved.

Any juvenile committed under this act who is released on parole prior to the expiration of the juvenile's maximum term may be retained under parole supervision for a period not exceeding the unserved portion of the term and any term of post-incarceration supervision imposed pursuant to paragraph (5) of this subsection. The Parole Board, the juvenile, the juvenile's attorney, the juvenile's parent or guardian or, with leave of the court any other interested party, may make a motion to the court, with notice to the prosecuting attorney, for the return of the child from a juvenile facility prior to his parole and provide for an alternative disposition which would not exceed the duration of the original time to be served in the facility. Nothing contained in this paragraph shall be construed to limit the authority of the Parole Board as set forth in section 15 of P.L.1979, c.441 (C.30:4-123.59).

(3) Upon application by the prosecutor, the court may sentence a juvenile who has been convicted of a crime of the first, second, or third degree if committed by an adult, to an extended term of incarceration beyond the maximum set forth in paragraph (1) of this subsection, if it finds that the juvenile was adjudged delinquent on at least two separate occasions, for offenses which, if committed by an adult, would constitute a crime of the first or second degree, and was previously committed to an adult or juvenile facility. The extended term shall not exceed five additional years for an act which would constitute murder and shall not exceed two additional years for all other crimes of the first degree or second degree, if committed by an adult, and one additional year for a crime of the third degree, if committed by an adult.

(4) Upon application by the prosecutor, when a juvenile is before the court at one time for disposition of three or more unrelated offenses which, if committed by an adult, would constitute crimes of the first, second or third degree and which are not part of the same transaction, the court may sentence the juvenile to an extended term of incarceration not to exceed the maximum of the permissible term for the most serious offense for which the juvenile has been adjudicated plus two additional years.

(5) Every disposition that includes a term of incarceration shall include a term of post-incarceration supervision equivalent to one-third of the term of incarceration imposed. During the term of post-incarceration supervision the juvenile shall remain in the community and in the legal custody of the Juvenile Justice Commission established pursuant to section 2 of P.L. 1995, c.284 (C.52:17B-170) in accordance with the rules of the parole board, unless the appropriate parole board panel determines that post-incarceration supervision should be revoked and the juvenile returned to custody in accordance with the procedures and standards set forth in sections 15 through 21 of P.L. 1979, c.441 (C.30:4-123.59 through C.30:4-123.65). The term of post-incarceration supervision shall commence upon release from incarceration or parole, whichever is later. A term of post-incarceration supervision imposed pursuant to this paragraph may be terminated by the appropriate parole board panel if the juvenile has made a satisfactory adjustment in the community while on parole or under such supervision, if continued supervision is not required and if the juvenile has made full payment of any fine or restitution.

5. Section 5 of P.L. 1982, c.81 (C.2A:4A-74) is amended to read as follows:

C.2A:4A-74 Court intake service conference.

5. Court intake service conference. a. Where the juvenile is diverted to a court intake service conference, notices of the conference shall be sent

to the juvenile and his parents or guardian and to the complainant or victim. The parties may be requested to bring to the conference all pertinent documents in their possession, including medical, social, and school records.

b. In determining the appropriate resolution of a complaint, the following factors shall be considered by court intake services:

- (1) The seriousness of the alleged offense or conduct and the circumstances in which it occurred;
- (2) The age and maturity of the juvenile;
- (3) The risk that the juvenile presents as a substantial danger to others;
- (4) The family circumstances, including any history of drugs, alcohol abuse or child abuse on the part of the juvenile, his parents or guardian;
- (5) The nature and number of contacts with court intake services and the court that the juvenile and his family have had;
- (6) The outcome of those contacts, including the services to which the juvenile or family have been referred and the results of those referrals;
- (7) The availability of appropriate services;
- (8) Any recommendations expressed by the victim or complainant, or arresting officer, as to how the case should be disposed;
- (9) Whether diversion can be accomplished in a manner that holds the juvenile accountable for the conduct;
- (10) The impact of the offense on the victim or victims; and
- (11) The impact of the offense on the community.

c. Each juvenile shall be reviewed without a presumption of guilt. The intake conference shall be concerned primarily with providing balanced attention to the protection of the community, the imposition of accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community and the development of competencies to enable the juvenile offender to become a responsible and productive member of the community. In addition, the conference shall be concerned with preventing more serious future misconduct by the juvenile offender by obtaining the cooperation of the juvenile and his parents or guardian in complying with its recommendations. The court may schedule a hearing where the complainant or victim objects to the recommendations from the conference.

d. The resolution from the conference may include but shall not be limited to counseling, restitution, referral to appropriate community agencies, or any other community work programs or other conditions consistent with diversion that aids in providing balanced attention to the protection of the community, the imposition of accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community and the development of competencies to enable the juvenile

offender to become a responsible and productive member of the community, provided that:

(1) Obligations imposed as a result of the intake conference shall be an order of the court approved by the presiding judge and shall be set forth in writing and may not exceed six months. The juvenile and his or her parents or guardian shall receive copies, as shall any agencies providing services under the agreement;

(2) The court intake service worker shall inform the juvenile and the juvenile's parents or guardian in writing of their right to object at any time prior to their written agreement to the facts or terms of the intake conference decision, and if objections arise, the intake service worker may alter the terms of the proposed agreement or refer the matter to the presiding judge who shall determine if the complaint will be heard in court or returned to intake conference for further action;

(3) Written agreement pursuant to intake conferences may be terminated at any time upon the request of the juvenile and the matter referred to the presiding judge;

(4) The court intake services conference may not order the confinement of a juvenile, place a juvenile on probation, or remove a juvenile from his family as a disposition; and

(5) If, at any time during the diversion period, the court intake service worker determines that the obligations imposed under the written agreement are not being met, the intake worker shall notify the presiding judge in writing. In the case of failure to comply with the obligations imposed under the agreement by the parents or guardian, the court may proceed against such persons for enforcement of the agreement. In the case of failure to comply by the juvenile, the matter shall be referred to the court for action.

e. At the end of the diversion period a second court intake services conference may be held with all parties to the written agreement present to ascertain if the terms of the agreement have been fulfilled. If all conditions have been met, the intake worker shall so inform the presiding judge in writing who shall order the complaint dismissed. A copy of the order dismissing the complaint shall be sent to the juvenile. If the conditions of the written agreement have not been met, the intake worker may refer the matter to the presiding judge who shall determine if the complaint will be heard in court or returned to court intake services for further action. Based on the evaluations required under this paragraph, the intake conference agreement may be extended beyond the six-month maximum if all parties agree. In no case shall an intake conference agreement exceed nine months.

f. All proceedings before the conference are confidential and they shall receive only those records which in the court's judgment are necessary to aid in making a recommendation.

6. Section 6 of P.L.1982, c.81 (C.2A:4A-75) is amended to read as follows:

C.2A:4A-75 Juvenile conference committees.

6. a. The court may appoint one or more juvenile conference committees for each county or municipality to hear and decide matters referred to it by the court.

b. The method of appointment and terms of membership to the committees shall be made pursuant to guidelines developed by the Supreme Court.

c. Where the juvenile is diverted to a juvenile conference committee, notices of the conference shall be sent to the juvenile and his parents or guardian and to the complainant or victim. The parties may be requested to bring to the conference all pertinent documents in their possession, including medical, social, and school records.

d. The committee shall serve under the authority of the court in hearing and deciding such matters involving alleged juvenile offenders as are specifically referred to it by the court. Each juvenile shall be reviewed without a presumption of guilt. The committee shall be concerned primarily with providing balanced attention to the protection of the community, the imposition of accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community and the development of competencies to enable the juvenile offender to become a responsible and productive member of the community. In addition, the committee shall be concerned with preventing more serious future misconduct by the juvenile offender by obtaining the cooperation of the juvenile and his parents or guardian in complying with its recommendations. The court may schedule a hearing where the complainant or victim objects to the recommendations from the conference.

e. The committee shall provide for the resolution of the matter and shall supervise and follow up compliance with its recommendations in the same manner and under the same limitations and with the same sanctions as the court intake service conference.

f. All proceedings before the juvenile conference committee are confidential and include only those records which in the court's judgment are necessary to aid in making a recommendation.

7. Section 1 of P.L.1995, c.284 (C.52:17B-169) is amended to read as follows:

C.52:17B-169 Findings, declarations relative to juvenile justice.

1. The Legislature finds and declares:

- a. The public safety requires reform of the juvenile justice system;
- b. Juvenile arrests for murder, robbery, aggravated sexual assault, sexual assault and aggravated assault have increased 38 percent between 1988 and 1993 and New Jersey ranks near the top nationally in the number of juvenile arrests for serious violent crimes;
- c. Juvenile crime has become a leading cause of injury and death among young people;
- d. Currently, preventive, deterrent and rehabilitative services and sanctions for juveniles are the responsibility of no less than three State departments: The Department of Law and Public Safety deals with county prosecutors and local police and implements prevention programs; the Department of Corrections operates the New Jersey Training School for Boys and the Juvenile Medium Security Facility, and its Bureau of Parole supervises juvenile parolees; and the Department of Human Services operates residential and day programs in facilities for juveniles adjudicated delinquent;
- e. The division of responsibility for the juvenile justice population and the limitations on resources available to meet ever-increasing demands for services provided by the Departments of Human Services and Corrections have prevented the departments from maximizing efforts to meet the special needs of the juvenile justice population;
- f. The juvenile justice system lacks services and sanctions short of incarceration, particularly in urban areas and for that reason, many juveniles are not held accountable until they have committed a series of increasingly serious criminal acts;
- g. The special needs of juveniles can be addressed through services and sanctions provided at the county and local level;
- h. The need to protect the public from criminal acts by juvenile offenders requires a comprehensive program and concerted action of governmental agencies and private organizations at the State, county and local level that permit effective response and avoid waste of scarce resources;
- i. (1) The comprehensive program should provide a range of services and sanctions for juveniles sufficient to protect the public through prevention; early intervention; and a range of meaningful sanctions that ensure accountability, provide training, education, treatment and, when necessary, confinement followed by community supervision that is adequate to protect the public and promote successful reintegration into the community;
- (2) Consistent with the need to protect the public, services and sanctions for juveniles shall provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, fostering interaction and dialogue between the offender, victim and

community and the development of competencies to enable juvenile offenders to become responsible and productive members of the community.

j. The most efficient and effective use of available resources requires fixing responsibility for the comprehensive program in a single State agency and providing incentives to encourage the development and provision of appropriate services and sanctions at the county and local level; and

k. It is, therefore, necessary to establish a Juvenile Justice Commission responsible for operating State services and sanctions for juveniles involved in the juvenile justice system and responsible for developing a Statewide plan for effective provision of juvenile justice services and sanctions at the State, county and local level; to establish a State/Community Partnership Grant Program through which the State will provide incentives to county and local governments to encourage the provision of services and sanctions for juveniles adjudicated or charged as delinquent and programs for the prevention of juvenile delinquency, and to establish county youth services commissions responsible for planning and implementing the Partnership at the local level.

8. Section 5 of P.L.1995, c.284 (C.52:17B-173) is amended to read as follows:

C.52:17B-173 Functions, powers, duties, authority of advisory council.

5. The advisory council shall have the following functions, powers, duties and authority:

a. To meet at least quarterly and at such other times as designated by the executive director or the chair of the advisory council;

b. To establish any committees to carry out its responsibilities;

c. To advise the executive director regarding the implementation of the recommendations included in the final report submitted pursuant to Executive Order 10 of 1994; the master plan submitted pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170); the integration, coordination and collaboration of programs, services and sanctions for juveniles; and the actions to be taken to increase public awareness of the juvenile justice system and its needs; and

d. To ensure the programs, services and sanctions for juvenile offenders are striving to provide balanced attention to the protection of the community, imposing accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community and developing competencies in the juveniles to enable them to become responsible and productive members of the community.

9. This act shall take effect on the first day of the seventh month after the date of enactment, but the Director of the Administrative Office of the Courts and the Juvenile Justice Commission shall take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 8, 2002.

CHAPTER 409

AN ACT concerning certain homeowners insurance deductibles and premium rates, and providing for a consumer information brochure.

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

C.17:36-5.33 Definitions relative to homeowners insurance deductibles and premium rates.

1. For purposes of this act:

"Commissioner" means the Commissioner of Banking and Insurance.

"Homeowners insurance" means personal lines insurance provided against loss to real and personal property as defined in the standard fire policy and extended coverage endorsement thereon, a dwelling policy, the homeowners multiple peril policy, insurance against the perils of vandalism, malicious mischief, burglary, or theft, or liability insurance or any combination thereof, or any other such policy delivered, issued or renewed or approved by the commissioner for issuance, delivery or renewal in this State.

C.17:36-5.34 Uniform policy language concerning hurricane deductible.

2. The commissioner shall establish by regulation uniform policy language regarding the applicability of hurricane deductibles and the form of notice to be provided to an insured under a homeowners insurance policy by an insurer utilizing a hurricane deductible program or programs.

C.17:36-5.35 Expedited rate filing procedure, certain.

3. a. A filer may use an expedited rate filing procedure to file for a proposed alteration to its homeowners insurance rating system when the filer requests an increase of no more than five percent in its Statewide rate for homeowners insurance at any time during a calendar year, with documentation supporting the increase no later than 30 days prior to the effective date of the rate change, provided that the increase shall not produce

rates that are excessive, inadequate for the safety and soundness of the insurer, or unfairly discriminatory.

b. The commissioner shall establish by regulation the documentation which shall accompany the filing, which shall be reasonable and in accordance with the nature of the filing, and upon submission of the documentation required, the filing shall be deemed complete. The rate change shall be effective no sooner than the 30th day following the filing.

c. The commissioner may challenge a rate increase made pursuant to subsection a. of this section within 30 days of the date the filing is received, by notifying the filer in writing. The commissioner shall hear the matter on an expedited basis and shall render a final determination within four months of the date of the filing. The commissioner may, for good cause, extend this four-month period up to an additional three months.

d. Any increase in excess of the rate increases permitted by subsection a. of this section shall be subject to the provisions of P.L.1944, c.27 (C.17:29A-1 et seq.).

e. A filer shall not file more than one request in any 12-month period for an increase in its homeowners insurance rates pursuant to this section.

C.17:36-5.36 Consumer information brochure on hurricane deductibles required for issuance of homeowners policy.

4. a. No homeowners insurance policy shall be issued, delivered or renewed in this State on or after the 90th day following the effective date of this act unless the policy is accompanied by a consumer information brochure which explains the insurer's hurricane deductible program, if any, and which includes the information on flood insurance required to be provided pursuant to P.L.2000, c.84.

b. The board of directors of the New Jersey Insurance Underwriting Association established pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.) shall prepare and disseminate a consumer information brochure in accordance with the requirements of this section.

c. An insurer shall provide a consumer information brochure to an insured at least annually at the time of policy renewal, or as otherwise ordered by the commissioner.

C.17:36-5.37 Regulations.

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

6. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 410

AN ACT concerning the practice of medicine and amending P.L.1989, c.300.

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

1. Section 25 of P.L.1989, c.300 (C.45:9-19.15) is amended to read as follows:

C.45:9-19.15 Licensing fees for physician, podiatrist.

25. a. The State Board of Medical Examiners shall increase the licensing fee of physicians and podiatrists in an amount sufficient to fund the costs of establishing and operating the Medical Practitioner Review Panel and the position of medical director, established pursuant to P.L.1989, c.300 (C.45:9-19.4 et al.).

b. The board shall establish a reduced licensing fee for physicians and podiatrists who are 65 years of age or older and who have no affiliation status with a licensed health care facility or a health maintenance organization.

c. The board shall charge the following licensing fees to a physician whose professional practice is limited to providing patient care exclusively without compensation or the expectation or promise of compensation and in a facility or through a program conducted under the supervision of a physician licensed by and in good standing with the State: \$150 for the license application fee; \$125 each for the initial and biennial registration fees, respectively; and \$100 for the endorsement fee.

Nothing in this subsection, except for the licensing fee, shall be construed to exempt any person from or abrogate any provision in Title 45 of the Revised Statutes or any other Title applicable to the practice of medicine or surgery and any regulations adopted pursuant thereto including, but not limited to, requirements for licensure or coverage by medical malpractice liability insurance.

2. The State Board of Medical Examiners in the Department of Law and Public Safety shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of this act.

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

Approved January 8, 2002.

CHAPTER 411

AN ACT extending the recovery and refund periods for the sales and use tax refunds for flood victims of Hurricane Floyd, amending P.L.1999, c.365.

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

1. Section 1 of P.L.1999, c.365 is amended to read as follows:

1. a. Receipts from sales made during the recovery period of replacement motor vehicles, household goods, home repair materials including but not limited to sheet rock and lumber, heating and cooling systems and appliances, to victims of Hurricane Floyd residing in disaster areas, and sales of replacement motor vehicles purchased to replace motor vehicles damaged in flood waters caused by Hurricane Floyd within the federally designated disaster areas but owned by any resident of the State, are, subject to the conditions and limitations of subsection e. of this section, exempt from the tax imposed under the "Sales and Use Tax Act."

b. Receipts for services to install, replace or repair household goods, home repair materials, heating and cooling systems and appliances rendered during the recovery period for victims of Hurricane Floyd residing in disaster areas, and receipts for services to repair motor vehicles damaged by flood waters within the disaster areas are, subject to the conditions and limitations of subsection e. of this section, exempt from the tax imposed under the "Sales and Use Tax Act."

c. Notwithstanding the provisions of subsections a. and b. of this section, the vendor shall charge and collect from the purchaser on such sales and charges at the rate then in effect, and the tax shall be refunded to the purchaser by the filing of a claim on or before September 30, 2001, with the New Jersey Division of Taxation for a refund of sales and use taxes paid for the replacement or servicing of items damaged or destroyed by Hurricane Floyd. No refunds shall be made on claims filed after September 30, 2001.

d. (1) Except as to the motor vehicles owned by those who reside outside the disaster areas discussed in paragraph (2) of this subsection, proof of claim for refund shall be demonstrated by an approved Federal Emergency Management Agency application for disaster assistance, by insurance claim, or by such information deemed necessary by the director, including but not limited to proof of tax paid, for a prompt refund to be given to disaster victims for sales taxes paid to replace or service items damaged or destroyed in flood waters of Hurricane Floyd as the Director of the Division of Taxation shall prescribe by regulation.

(2) Proof of claim for refund for a motor vehicle damaged in flood waters caused by Hurricane Floyd within the disaster areas but owned by those outside the disaster areas shall be demonstrated by insurance claim or, if the vehicle was not covered by comprehensive insurance, by such other information or documentation as the director shall prescribe.

(3) Notwithstanding any provisions of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director may adopt, immediately upon filing with the Office of Administrative Law, such regulations, including but not limited to terms and conditions governing application for and payment of refunds, as the director deems necessary to implement the provisions of this section, which regulations shall be effective for a period not to exceed 180 days from the date of filing. Such regulations may thereafter be amended, adopted or readopted by the director as the director deems necessary in accordance with the requirements of P.L.1968, c.410. The director shall, after receipt of appropriate forms and supporting documentation, refund the taxes paid by residents of the State.

e. (1) Determination of the refund amount from sales of home repair materials exempted by subsection a. of this section shall be based on the separately stated cost of the materials to the customer, or, if no cost for those materials is separately stated on the customer's contract, bill or invoice by the contractor, the exemption shall be based on fifty percent of the total amount of the sales price.

(2) Determination of the refund amount for sales of motor vehicles exempted by subsection a. of this section shall be based on the amount actually paid for the replacement motor vehicle, net of any credit for property of the same kind traded-in, up to the average retail value of the vehicle being replaced, as reported in the current National Automobile Dealers Association Guide, or \$2,000, whichever is greater.

f. For the purposes of this section:

"Disaster areas" means the counties designated as disaster areas pursuant to the President's September 19, 1999 declaration of a major disaster in this State; and

"Recovery period" means September 17, 1999 through March 31, 2001.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 412

AN ACT concerning eluding a law enforcement officer and amending N.J.S.2C:11-4.

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

1. N.J.S.2C:11-4 is amended to read as follows:

Manslaughter.

2C:11-4. Manslaughter. a. Criminal homicide constitutes aggravated manslaughter when:

(1) The actor recklessly causes death under circumstances manifesting extreme indifference to human life; or

(2) The actor causes the death of another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2. Notwithstanding the provision of any other law to the contrary, the actor shall be strictly liable for a violation of this paragraph upon proof of a violation of subsection b. of N.J.S.2C:29-2 which resulted in the death of another person. As used in this paragraph, "actor" shall not include a passenger in a motor vehicle.

b. Criminal homicide constitutes manslaughter when:

(1) It is committed recklessly; or

(2) A homicide which would otherwise be murder under section 2C:11-3 is committed in the heat of passion resulting from a reasonable provocation.

c. Aggravated manslaughter under paragraph (1) of subsection a. of this section is a crime of the first degree and upon conviction thereof a person may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 10 and 30 years. Aggravated manslaughter under paragraph (2) of subsection a. of this section is a crime of the first degree. Manslaughter is a crime of the second degree.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 413

AN ACT concerning interference with transportation facilities, amending N.J.S. 2C:33-14, P.L.1970, c. 246 and P.L.1991, c.335 and repealing R.S. 48:12-167.

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

1. Section 1 of P.L.1970, c.246 (C.2A:53A-16) is amended to read as follows:

C.2A:53A-16 Parental liability for certain acts of minor.

1. The parents of any minor who shall maliciously or willfully injure any property of a railroad, street railway, traction railway or autobus public utility shall be liable for damages in the amount of the injury to a limit of \$5,000, to be collected by the property owner in the Superior Court, together with costs of suit.

2. N.J.S. 2C:33-14 is amended to read as follows:

Interference with transportation.

2C:33-14. a. Interference with Transportation. A person is guilty of interference with transportation if the person purposely or knowingly:

(1) casts, shoots or throws anything at, against or into any vehicle, railroad car, trolley car, subway car, ferry, airplane, or other facility of transportation; or

(2) casts, shoots, throws or otherwise places any stick, stone, object or other substance upon any street railway track, trolley track or railroad track; or

(3) endangers or obstructs the safe operation of motor vehicles by casting, shooting, throwing or otherwise placing any stick, stone, object or other substance upon any highway or roadway; or

(4) unlawfully climbs into or upon any railroad car, either in motion or standing on the track of any railroad company in this State; or

(5) unlawfully disrupts, delays or prevents the operation of any train, bus, jitney, trolley, subway, airplane or any other facility of transportation. The term "unlawfully disrupts, delays or prevents the operation of" does not include non-violent conduct growing out of a labor dispute as defined in N.J.S.2A:15-58.

b. Interference with transportation is a disorderly persons offense.

c. Interference with transportation is a crime of the fourth degree if the person purposely, knowingly or recklessly causes bodily injury to another person or causes pecuniary loss in excess of \$500 but less than \$2000.

d. Interference with transportation is a crime of the third degree if the person purposely, knowingly or recklessly causes significant bodily injury to another person or causes pecuniary loss of \$2000 or more, or if the person purposely or knowingly creates a risk of significant bodily injury to another person.

e. Interference with transportation is a crime of the second degree if the person purposely, knowingly or recklessly causes serious bodily injury to another person.

3. Section 1 of P.L.1991, c.335 (C.2C:33-14.1) is amended to read as follows:

C.2C:33-14.1 Vandalizing railroad crossing devices, property; grading of offenses; graffiti.

1. a. Any person who purposely, knowingly or recklessly defaces, damages, obstructs, removes or otherwise impairs the operation of any railroad crossing warning signal or protection device, including, but not limited to safety gates, electric bell, electric sign or any other alarm or protection system authorized by the Commissioner of Transportation, which is required under the provisions of R.S.48:12-54 or R.S.48:2-29, or any other railroad property or equipment, other than administrative buildings, offices or equipment, shall, for a first offense, be guilty of a crime of the fourth degree; however, if the defacement, damage, obstruction, removal or impediment of the crossing warning signal or protection device, property or equipment recklessly causes bodily injury or pecuniary loss of \$2000 or more, the actor is guilty of a crime of the third degree, or if it recklessly causes a death or serious bodily injury, the actor is guilty of a crime of the second degree.

b. A person convicted of a violation of this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti and to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property. As used in this section, "act of graffiti" means the drawing, painting or making of any mark or inscription on public or private real or personal property without the permission of the owner.

Repealer.

4. R.S.48:12-167 is repealed.
5. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 414

AN ACT concerning the Delaware River and Bay Authority and amending P.L.1961, c.66.

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

1. Section 1 of P.L.1961, c.66 (C.32:11E-1) is amended to read as follows:

C.32:11E-1 Delaware-New Jersey Compact.

1. The State of New Jersey hereby agrees with the State of Delaware, upon enactment by the State of Delaware of legislation having the same effect as this section, to the following compact:

DELAWARE-NEW JERSEY COMPACT

WHEREAS, The states of Delaware and New Jersey are separated by the Delaware River and Bay which create a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two states thereby hindering the economic growth and development of those areas in both states which border the river and bay; and

WHEREAS, The pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the two states in order to advance the economic development and to improve crossings, transportation, terminal and other facilities of the area; and

WHEREAS, The financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two states and their citizens, the region and nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

WHEREAS, The Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. s.1701) and P.L.1961, c.66 (C.32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress in accordance with Pub.L. 87-678 (1962), created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both states which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

WHEREAS, The economic growth and development of areas of both states will be further advanced by authorizing the authority to undertake

economic development projects, other than major projects as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the state in which the project is to be located, except that the authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two states; and

WHEREAS, The natural environment of those areas in the two states which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the authority shall be in complete compliance with all applicable environmental protection laws and regulations before the authority may undertake the planning, development, construction or operation of any project, other than a crossing;

NOW, THEREFORE, *The State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:*

ARTICLE I SHORT TITLE

This compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II DEFINITIONS

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the states, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing as herein defined, adapted for public use within each of the states party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

"Commerce facility or development" means any structure or facility adapted for public use or any development for a public purpose within each of the states party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal, and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and any other facility or activity designed, directly or indirectly, to promote business or commerce which, in the judgment of the authority, is required for the sound economic development of the area.

"Appurtenances" and "equipment" mean all works, buildings, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility, or commerce facility or development.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Major project" means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, as determined in accordance with state law by the environmental agency of the state in which the major project is to be located.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each state to exercise the functions, powers and duties of that office.

"Authority" means the authority created by this compact or any agency successor thereto.

The singular whenever used in this compact shall include the plural, and the plural shall include the singular.

ARTICLE III FAITHFUL COOPERATION

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction,

operation, maintenance and improvement of all projects entrusted to the authority created by this compact.

ARTICLE IV
ESTABLISHMENT OF AGENCY; PURPOSES

The two states agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the "authority"), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the states of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, together with such approaches or connections thereto as in the judgment of the authority are required to make adequate and efficient connections between such crossings and any public highway, or other routes in the State of Delaware or in the State of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which facility, in the judgment of the authority, is required for the sound economic development of the area; and

(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which in the judgment of the authority is required for the sound economic development of the area; and

(d) The performance of such other functions as may be hereafter entrusted to the authority by concurrent legislation expressly in implementation hereof.

The authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the state in which the project is to be located.

The authority shall not undertake any major project, or part thereof, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two states expressly in implementation thereof.

The authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the state in which the major project is to be located. Each state shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

ARTICLE V COMMISSIONERS

The authority shall consist of 12 commissioners, six of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of Delaware, and six of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of New Jersey; not more than three of the commissioners of each state shall be of the same political party; the commissioners for each state shall be appointed in the manner fixed and determined from time to time by the law of each state respectively. Each commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first commissioners shall be so designated that the term of at least one commissioner from each state shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any commissioner may be suspended or removed from office as provided by law of the state from which he shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the authority and may not receive any other compensation for services to the authority except such as may from time to time be authorized from such revenues by concurrent legislation.

ARTICLE VI BOARD ACTION

The commissioners shall have charge of the authority's property and affairs and shall, for the purpose of doing business, constitute a board; but no action of the commissioners shall be binding or effective unless taken at a meeting at which at least four commissioners from each state are present, and unless at least four commissioners from each state shall vote in favor

thereof. The vote of any one or more of the commissioners from each state shall be subject to cancellation by the Governor of such state at any time within 10 days (Saturdays, Sundays and public holidays in the particular state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each state may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

ARTICLE VII GENERAL POWERS

For the effectuation of its authorized purposes, the authority is hereby granted the following powers:

- a. To have perpetual succession.
- b. To adopt and use an official seal.
- c. To elect a chairman and a vice-chairman from among the commissioners. The chairman and vice-chairman shall be elected from different states, and shall each hold office for two years. The chairmanship and vice-chairmanship shall be alternated between the two states.
- d. To adopt bylaws to govern the conduct of its affairs by the board of commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no bylaw, or rule, regulation or order shall take effect until it has been filed with the Secretary of State of each state or in such other manner in each state as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility or commerce facility or development owned or operated by the authority, including approach roads, it shall consult with appropriate officials of both states in order to insure, as far as possible, uniformity of such rules, regulations and orders with the law of both states.
- e. To appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.
- f. To enter into contracts and agreements with either state or with the United States, or with any public body, department, or other agency of either state or of the United States or with any individual, firm or corporation, deemed necessary or advisable for the exercise of its purposes and powers.
- g. To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or

contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

h. To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another, and which the authority is authorized to own and operate.

i. To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the authority for the purpose of connecting the same with any highway or other route in either state.

j. To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the authority and by a facsimile of its corporate seal.

k. To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

l. To grant the use of, by franchise, lease or otherwise, and to make charges for the use of, any crossing, facility or other project or property owned or controlled by it.

m. To exercise the right of eminent domain to acquire any property or interest therein.

n. To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

o. To exercise all other powers not inconsistent with the Constitutions of the two states or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII
ADDITIONAL POWERS

For the purpose of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either state without the concurrence of the other, and may be exercised within such state, or may be granted to the authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the authority under the law of either state or of Congress without authorization by the law of both states.

ARTICLE IX
EMINENT DOMAIN

If the authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the authority, shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either state, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the state in which the project is to be located. The authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

In any condemnation proceeding in connection with the acquisition by the authority of property or property rights of any character in either state and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the state in which such property is located with respect to the condemnation of property for the construction, reconstruction and maintenance of highways therein, shall control. The authority shall have the same power and authority with respect thereto as the state agency named in any such law; provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two states with respect to the enactment, repeal or amendment of any law or rule of court on the subject of condemnation under which the authority may proceed by virtue of this article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the state.

The power of the authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

ARTICLE X REVENUES AND APPLICATION

The authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable, in connection with any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the authority, together with interest thereon and (3) to provide reserves for such purposes; and the authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects, such proportion of the general expenses of the authority as it shall deem properly chargeable thereto.

ARTICLE XI COVENANT WITH BONDHOLDERS

The two said states covenant and agree with each other and with the holders of any bonds or other securities or obligations of the authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility, commerce facility or development, or other project, that the two said states will not, so long as any of such bonds or

other obligations remain outstanding and unpaid, diminish or impair the power of the authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the two said states will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV (a) of this compact, by any person or body other than the authority; unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

ARTICLE XII SECURITIES LAWFUL INVESTMENTS

The bonds or other securities or obligations which may be issued by the authority pursuant to this compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all state and municipal officers and bodies of each state, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either state, may properly and legally invest any funds, including capital, belonging to them or within their control; and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency of either state for any purpose for which the deposit of bonds or other obligations of such state is now or may hereafter be authorized.

ARTICLE XIII TAX STATUS

The powers and functions exercised by the authority under this compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the states of Delaware and New Jersey, the region and nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or

political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

ARTICLE XIV JURISDICTION; USE OF LANDS

Each of the two states hereby consents to the use and occupancy by the authority of any lands and property of the authority in such state for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

Each state may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI NO PLEDGE OF CREDIT

The authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey, or of any other agency or of any political subdivision of said states.

ARTICLE XVII LOCAL COOPERATION AND AGREEMENTS

a. All municipalities, political subdivisions and every department, agency or public body of each of the states are hereby authorized and empowered to cooperate with, aid and assist the authority in effectuating the provisions of this compact and of any amendment hereof or supplement hereto.

b. The authority is authorized and empowered to cooperate with each of the states, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the state in which the project is to be located, with each of the states, or with any political subdivision thereof, and with any municipality, county, local government, agency, public authority or commission or with two or more of them, for or relating to such purposes.

c. The authority and the city, town, municipality or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowered, subject to compliance with the laws of the state in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules and regulations, if any, of the city, town, municipality or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

ARTICLE XVIII DEPOSITARIES

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either state are authorized to give security for the safekeeping and prompt payment of moneys of the authority deposited by it with them, in such manner and form as may be required by and may be approved by the authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the authority, or may consist of the deposit with the authority or other depositary approved by the authority as collateral of such securities as the authority may approve.

ARTICLE XIX AGENCY POLICE

Members of the police force established by the authority, regardless of their residence, shall have in each state, on the crossings, transportation or

terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated or controlled by the authority, and at such other places and under such circumstances as the law of each state may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such state or usually exercised by such officers in each state.

ARTICLE XX REPORTS AND AUDITS

The authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each state.

It shall furnish such information or data with respect to its affairs as may be requested by the Governor or Legislature of each state.

ARTICLE XXI BOUNDARIES UNAFFECTED

The existing territorial or boundary lines of the states, or the jurisdiction of the two states established by said boundary lines, shall not be changed hereby.

ARTICLE XXII ENVIRONMENTAL PROTECTION

a. The planning, development, construction and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resource laws, now or hereinafter enacted, or promulgated by the state in which the project, or any part thereof, is located.

b. The planning, development, construction and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, subaqueous land laws or natural resource laws, now or hereafter enacted or promulgated by either state.

c. The planning, development, construction and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. Nothing in this compact shall be deemed to preempt, modify or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

d. The planning, development, construction and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including, but not limited to, "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.) and the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.).

2. This act shall take effect upon enactment into law by the State of Delaware of legislation of substantially similar substance and effect, but if the State of Delaware shall have already enacted such legislation, this act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 415

AN ACT granting a tax credit to certain businesses that contribute to State-approved nonprofit organizations which engage in activities that foster the preservation and revitalization of low and moderate income neighborhoods and supplementing Title 52 of the Revised Statutes.

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

C.52:27D-490 Short title.

1. This act shall be known and may be cited as the "Neighborhood Revitalization State Tax Credit Act."

C.52:27D-491 Definitions relative to the "Neighborhood Revitalization State Tax Credit Act."

2. As used in this act:

"Assistance" means the contribution of moneys to aid in the provision of neighborhood preservation and revitalization services or community services.

"Business entity" means any business firm or individual which is authorized to conduct or operate a trade or business in the State and is subject to taxes on business related income.

"Certificate for neighborhood revitalization State tax credits" means the certificate in the form prescribed by the Treasurer and issued by the commissioner to a business entity that specifies the dollar amount of neighborhood preservation and revitalization State tax credits that that business entity may take as an annual credit against certain state taxes pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.).

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

"Eligible neighborhood" means a contiguous area located in a municipality that, at the time of the application to the department for approval of a neighborhood preservation and revitalization plan, is either eligible to receive aid under the "Special Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.) or coextensive with a school district which qualified for designation as an "Abbott district" pursuant to the "Comprehensive Educational Improvement and Financing Act of 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.).

"Housing and economic development activities" means those activities carried out in furtherance of a neighborhood preservation and revitalization plan in an eligible neighborhood approved pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), to improve the housing and economic conditions of the neighborhood; and shall include, without limitation, measures to foster the rehabilitation and construction of housing affordable to low and moderate income households within the neighborhood, including planning, design, rehabilitation, construction, and management of low and moderate income housing, home buyer counseling, and related activities needed to effectuate the rehabilitation and construction of housing affordable to low and moderate income households; measures to increase business activity within the neighborhood, including the rehabilitation and construction of commercial facilities and the provision of assistance to small business entities; and measures to increase the income and labor force participation of neighborhood residents, including provision of education, training, child care and transportation assistance to enable low income neighborhood residents to obtain or retain employment.

"Low income household" means a household whose gross household income is less than 50 percent of the median gross household income for the

region in which the neighborhood is located for households of similar size as determined by the department.

"Moderate income household" means a household whose gross household income is greater than or equal to 50 percent but less than 80 percent of the median gross household income of the region in which the neighborhood is located for households of similar size as determined by the department.

"Neighborhood preservation and revitalization activities" means housing and economic development activities and other neighborhood preservation and revitalization activities.

"Neighborhood Revitalization Plan" means a plan for the preservation or revitalization of an eligible neighborhood.

"Nonprofit organization" means a private nonprofit corporation that has been determined by the Internal Revenue Service of the United States Department of the Treasury to be exempt from income taxation under 26 U.S.C.s.501(c)(3).

"Other Neighborhood Revitalization Activities" means those activities, other than housing and economic development activities, carried out in furtherance of a State-approved neighborhood preservation and revitalization plan in a qualified low and moderate income neighborhood, and may include, without limitation, improvements to infrastructure, street scape, public open space, and transportation systems; provision of social and community services, health care, crime prevention, recreation activities, community and environmental health services; and community outreach and organizing activities.

"Qualified nonprofit organization" means a nonprofit organization that has demonstrated a commitment to the neighborhood for which it is submitting a plan or project, as reflected in its past activities or proposed activities in a preservation and revitalization plan.

"Qualified project" means one or more housing and economic development activities to be carried out in accordance with a neighborhood revitalization plan as approved by the commissioner with funds provided by a business entity eligible to receive a certificate for neighborhood revitalization State tax credits.

C.52:27D-492 Eligibility of business entity for certificate for neighborhood revitalization state tax credits.

3. A business entity shall be eligible for a certificate for neighborhood revitalization State tax credits if it has provided funding for a qualified project that has been approved in accordance with sections 4 and 5 of P.L.2001, c.415 (C.52:27D-493 and C.52:27D-494).

a. Credits may be granted in an amount up to 50 percent of the approved assistance provided to a nonprofit organization to implement a qualified neighborhood preservation and revitalization project.

b. The credit may be applied by the business entity receiving the certificate as credit against tax imposed on business related income, other than tax imposed under the New Jersey Gross Income Tax, including, but not limited to, business income subject to the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the sewer and water utility excise tax imposed pursuant to section 6 of P.L.1940, c.5 (C.54:30A-54) and the petroleum products gross receipts tax imposed pursuant to section 3 of P.L.1990, c.42 (C.54:15B-3).

c. The credit allowed to a business entity under this section may not exceed for any taxable year \$500,000 or the total amount of tax otherwise payable by the business entity for the taxable year, whichever is less, and, in addition, shall not exceed limitations placed on the amounts of credits or carryforward credits allowed, if any, under the relevant statute as enumerated in subsection b. of this section concerning the tax for which a credit is being claimed.

d. Credit shall not be allowed for activities for which the business entity is receiving credit under any other provision against any tax on business related income other than the New Jersey Gross Income Tax, including, but not limited to, the corporate business tax, corporate income tax, insurance premiums tax, petroleum products gross receipts tax, public utilities franchise tax, public utilities gross receipts tax, public utility excise tax, railroad franchise tax, and the saving institution tax.

e. The tax credit shall be awarded only for assistance provided within the same year in which the commissioner issued the certificate, or if the commissioner approved assistance for more than one year, within the year in which payment was scheduled and made. The provisions of this subsection may be waived for good cause shown.

f. The total tax credits certified for all qualified projects proposed in a fiscal year shall not exceed \$10,000,000.

C.52:27D-493 Neighborhood preservation and revitalization plan required for eligibility.

4. In order for an entity to be eligible to receive a tax credit pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), the nonprofit organization which is the recipient of funding provided by the entity shall submit a neighborhood preservation and revitalization plan to the department for approval,

and shall submit a proposed project which defines the elements of the plan to be implemented with the funds provided. Two or more nonprofit organizations may submit a plan to the department jointly. Any such plans shall designate one nonprofit organization as the lead organization with responsibility for the plan.

C.52:27D-494 Approval of plan by department; standards.

5. a. The department shall determine whether a neighborhood preservation and revitalization plan should be approved. The department shall approve a neighborhood preservation and revitalization plan if it satisfies the following standards:

- (1) the plan designates an eligible neighborhood; and
- (2) The plan was developed through a process that
 - (a) gave written notice to the municipality in which the neighborhood is located of its intention to develop a plan and utilized reasonable means to inform residents, property owners, and businesses in the neighborhood of its intention to develop a plan and provided opportunities for them to participate in the development of the plan;
 - (b) gave written notice to the municipality in which the neighborhood is located of the proposed plan and provided an opportunity for it to comment upon it orally and in writing, complied with all of the requirements of the "Municipal Land Use Law," P.L.1975, c. 291 (C. 40:55D-1 et seq.) concerning the plan, utilized reasonable means to inform residents, property owners, and businesses in the neighborhood of the proposed plan and provided an opportunity for them to comment upon it orally and in writing; and
 - (c) involved consultation with nonprofit organizations located within the neighborhood or providing services to residents of the neighborhood;
- (3) The plan is not inconsistent with
 - (a) any redevelopment plan adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and currently being implemented; or
 - (b) any neighborhood empowerment plan approved by the State pursuant to section 49 of P.L.1996, c.62 (C.55:19-64);
- (4) The plan sets forth an overall concept of the future of the neighborhood; one or more strategies to foster preservation and revitalization of the neighborhood in accordance with that concept; one or more activities, including housing and economic development activities and other preservation and revitalization activities proposed within the neighborhood to foster preservation and revitalization of the neighborhood in furtherance of those strategies, including a description of funding sources obtained or to be

sought for the planned activities and a timetable for the conduct of those activities; and

(5) The plan covers a period of no less than two and no more than ten years.

b. A nonprofit organization may, in submitting a proposed plan pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), adopt a redevelopment plan adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and currently being implemented; or a State-approved neighborhood empowerment plan pursuant to section 49 of P.L.1996, c.62 (C.55:19-64) as its neighborhood preservation and revitalization plan or a neighborhood preservation and revitalization plan previously approved by the department. The department shall approve such a plan.

c. A nonprofit organization that has submitted a neighborhood preservation and revitalization plan to the department may seek to amend it at any time. The department shall approve amendments if they comply with the standards set forth in subsection b. of this section.

C.52:27D-495 Project proposed by nonprofit organization, determination as to qualification.

6. a. The department shall determine in accordance with law and regulation whether a project proposed by a nonprofit organization is qualified for assistance for which a tax credit certificate will be granted pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.).

b. The department shall determine that a project proposed by a nonprofit organization or jointly by two or more nonprofit organizations is qualified for assistance if it meets all the following standards:

(1) The project consists of neighborhood preservation and revitalization activities within an eligible low and moderate income neighborhood. If two or more nonprofits propose a project jointly, all the proposed activities are within the same eligible low and moderate income neighborhood. The department may establish standards for waiver of compliance with this paragraph for activities located outside an eligible neighborhood but which particularly benefit residents of that neighborhood or for activities that benefit more than one eligible neighborhood.

(2) The project is reasonably designed to accomplish its intended purpose and it would further the purposes of a neighborhood preservation and revitalization plan approved in accordance with section 5 of this act.

(3) The nonprofit organization demonstrates that it has the capacity to carry out the activities.

(4) The nonprofit organization provides adequate assurances that the assistance will be expended exclusively for the proposed activities.

(5) "Housing and economic development activities" make up at least 60 percent of the total cost of the neighborhood preservation and revitalization activities in the proposed project. If two or more nonprofit organizations jointly propose a project, the total cost shall include the aggregate cost of all the activities included in the joint proposal.

c. The department shall establish by regulation the standards and procedures for determining which projects shall be determined to be qualified if the total tax credits certified under P.L.2001, c.415 (C.52:27D-490 et seq.) will exceed, or appears likely to exceed, \$10,000,000 for the year, so as to remain within that annual limit. Such standards shall establish criteria for rating projects which shall take into account, among other things, the following factors:

(1) The extent to which the project is addressing urban distress, as measured by existing levels of poverty and unemployment within the neighborhood;

(2) The extent to which the project is likely to attract private or public investment to the subject project or other projects in the neighborhood; and

(3) The extent to which the nonprofit organization has demonstrated the capacity to carry out the project.

Such standards shall focus exclusively on the relative merits of the project (including the capacity of the nonprofit to carry out the project) and shall not include any consideration of whether the project has, or does not yet have, a proposed source of assistance by a business entity.

C.52:27D-496 Issuance of certificate.

7. a. The commissioner shall determine, in accordance with law and regulation, whether to issue a certificate based upon proposed assistance by a business entity to a nonprofit organization to implement a qualified project.

b. The commissioner shall issue a certificate if the proposed assistance satisfies the following standards:

(1) The assistance is for a qualified neighborhood preservation and revitalization project;

(2) The assistance is not less than \$25,000 in each tax year for which credit is sought. Assistance may be approved for the current tax year and up to four additional years in the future. If assistance is approved for years other than the current tax year, the approval shall include a schedule showing the amount of assistance to be provided in each year;

(3) Neither the business entity nor any wholly owned subsidiary has previously failed to provide assistance to a nonprofit organization for which approval was granted. This requirement may be waived by the department upon a showing of good cause;

(4) The total of all assistance approved on behalf of a nonprofit organization per project does not exceed \$500,000; and

(5) The amount of assistance as proposed in a letter of intent from the business entity has been paid to the State Treasurer and deposited in a special trust account for the use of a qualified nonprofit organization in carrying out a qualified project, and the State Treasurer has sent authorization for issuance of a certificate to the commissioner. The qualified nonprofit shall have full access to the funds in the special trust account, subject to the provisions of section 8 of P.L.2001, c.415 (C.52:27D-497).

C.52:27D-497 Monitoring of projects carried out by nonprofit organizations.

8. a. The commissioner shall monitor the carrying out by nonprofit organizations of projects for which assistance has been received and tax credits awarded pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.) to ascertain whether the assistance is being used for the activities for which it was approved. The commissioner may require the submission of reports, the audit of financial records, the conduct of investigations, the posting of bonds or security and the inspection of activities whether carried out on the premises of the nonprofit organization or elsewhere. In furtherance of this function, the commissioner, or his or her designee, may issue subpoenas, hold evidentiary hearings, and administer oaths.

b. If, after notice and hearing, the commissioner determines that assistance is not being used for the activities for which it was approved, the commissioner may impose sanctions, including but not limited to:

(1) Requiring corrective actions by the nonprofit organization;

(2) Requiring that assistance or its cash value be paid back to the department. The department shall account for such funds to the Treasurer and may expend them in any manner that lawfully furthers the purposes of P.L.2001, c.415 (C.52:27D-490 et seq.).

(3) Revoking the department's determination that the project was qualified; or

(4) Barring the nonprofit for a period of time from approval of future projects.

c. No sanction imposed by the commissioner against the nonprofit organization shall affect the validity of the credits for assistance already contributed allowed to a business entity that was not on notice of the wrongful actions of the nonprofit at the time it made the contribution.

d. In the event a project proposed by a nonprofit cannot be completed, the department may take whatever action necessary to ensure that the funds earmarked for the failed project are reallocated to a project which is proceeding.

C.52:27D-498 Establishment for forms, procedures, rules; annual report to Governor, Legislature.

9. a. In order to administer the neighborhood preservation and revitalization tax credit program, the department shall establish any necessary forms, procedures or rules to effectuate this act, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The department shall seek to foster use of the tax credit and to make the tax credit simple to apply for and simple to use.

b. The department shall act as a clearinghouse. It shall maintain lists of qualified projects and of business entities that have expressed a desire to provide assistance to qualified projects.

c. The department shall give priority in processing to applications that demonstrate a multi-year commitment by the business entity to implementation of the neighborhood preservation and revitalization plan.

d. The department shall submit to the Governor and Legislature an annual report which shall include at least:

(1) the purpose and effectiveness of the credit;

(2) the benefits of the credit to the state;

(3) any recommendations by the department as to changes in legislation needed to better carry out the purposes of P.L.2001, c.415 (C.52:27D-490 et seq.).

e. For each application by, or behalf of, a business entity to approve assistance for a project, the department may charge a fee of up to 0.5 percent of the amount of assistance proposed, or approved, whichever is less, to pay for the administration of this program.

C.52:27D-499 Copy of certificate to taxpayers of the entity.

10. a. If a partnership, an S corporation, or a limited liability company qualifies for the credit, it shall provide a copy of the certificate to the taxpayers of the entity.

b. A taxpayer shall attach a copy of the certificate to any return upon which a credit is claimed under this section.

c. Any credit taken in this section may be subject to audit by the department or the State Treasurer.

11. This act shall take effect on the first day of the next State fiscal year after its enactment.

Approved January 8, 2002.

CHAPTER 416

AN ACT concerning limousines and revising parts of the statutory law.

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

1. R.S.33:1-1 is amended to read as follows:

Definitions.

33:1-1. For the purpose of this chapter, the following words and terms shall be deemed to have the meanings herein given to them:

a. "Alcohol." Ethyl alcohol, hydrated oxide of ethyl or neutral spirits from whatever source or by whatever process produced.

b. "Alcoholic beverage." Any fluid or solid capable of being converted into a fluid, suitable for human consumption, and having an alcohol content of more than one-half of one per centum (1/2 of 1%) by volume, including alcohol, beer, lager beer, ale, porter, naturally fermented wine, treated wine, blended wine, fortified wine, sparkling wine, distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors fit for use for beverage purposes or any mixture of the same, and fruit juices.

c. "Building." A structure of which licensed premises are or may be a part, including all rooms, cellars, outbuildings, passageways, closets, vaults, yards, attics, and every part of the structure of which the licensed premises are a part, and of any other structure to which there is a common means of access, and any other appurtenances.

d. "Commissioner." The Director of the Division of Alcoholic Beverage Control.

e. "Container." Any glass, can, bottle, vessel or receptacle of any material whatsoever used for holding alcoholic beverages, which container is covered, corked or sealed in any manner whatsoever.

f. "Eligible." The status of a person who is a citizen of the United States, a resident of this State, of good moral character and repute, and of legal age.

g. "Governing board or body." The board or body which governs a municipality, including a board of aldermen in municipalities so governed; but in every municipality having a board of public works which exercises general licensing powers such board shall be considered as the governing board or body.

h. "Importing." The act of bringing or causing to be brought any alcoholic beverage into this State.

- i. "Illicit beverage." Any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of this chapter, or on which any federal tax or tax imposed by the laws of this State has not been paid; and any alcoholic beverage possessed, kept, stored, owned or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport in violation of the provisions of this chapter.
- j. "Licensed building." Any building containing licensed premises.
- k. "Licensed premises." Any premises for which a license under this chapter is in force and effect.
- l. "Magistrate." The Superior Court or municipal court.
- m. "Manufacturer." Any person who, directly or indirectly, personally or through any agency whatsoever, engages in the making or other processing whatsoever of alcoholic beverages.
- n. "Municipality." Any city, town, township, village, or borough, including a municipality governed by a board of commissioners or improvement commission, but excluding a county.
- o. "Municipal board." The municipal board of alcoholic beverage control as established by this chapter.
- p. "Officer." Any sheriff, deputy sheriff, constable, police officer, member of the Division of State Police, or any other person having the power to execute a warrant for arrest, or any inspector or investigator of the Division of Alcoholic Beverage Control.
- q. "Original container." Any container in which an alcoholic beverage has been delivered to a retail licensee.
- r. "Person." Any natural person or association of natural persons, association, trust company, partnership, corporation, organization, or the manager, agent, servant, officer, or employee of any of them.
- s. "Premises." The physical place at which a licensee is or may be licensed to conduct and carry on the manufacture, distribution or sale of alcoholic beverages, but not including vehicular transportation.
- t. "Restaurant." An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of food for its customers and in which no other business, except such as is incidental to such establishment, is conducted.
- u. "Retailer." Any person who sells alcoholic beverages to consumers.
- v. "Rules and regulations." The rules and regulations established from time to time by the director.
- w. "Sale." Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including deliveries from without this State and

deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee.

x. "Unlawful alcoholic beverage activity." The manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of any alcoholic beverage in violation of this chapter, or the importing, owning, possessing, keeping or storing in this State of alcoholic beverages with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport alcoholic beverages in violation of this chapter, or the owning, possessing, keeping or storing in this State of any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this chapter, or to aid or abet another in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this chapter, or the aiding or abetting of another in any of the foregoing activities.

y. "Unlawful property." All illicit beverages and all implements, vehicles, vessels, airplanes, and paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages used in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages or owned, possessed, kept or stored with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages, whether such use be by the person owning, possessing, keeping, or storing the same, or by another with the consent of such person; and all alcoholic beverages, fixtures and personal property located in or upon any premises, building, yard or inclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept.

z. "Wholesaler." Any person who sells an alcoholic beverage for the purpose of resale either to a licensed wholesaler or to a licensed retailer, or both.

aa. "Limousine." A motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route, or is furnished without fare as an accommodation for a patron in connection with other business purposes, and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. This shall not include taxicabs, hotel or airport shuttles and buses, buses employed solely in transporting school children or teachers to and from school, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

bb. "Entertainment facility" is a privately-owned facility in which athletic, commercial, cultural, or artistic events are featured.

Any definition herein contained shall apply to the same word in any form. Thus "sell" means to make a "sale" as above defined.

2. Section 1 of P.L.1966, c.113 (C.34:11-56a1) is amended to read as follows:

C.34:11-56a1 Definitions.

1. As used in this act:

(a) "Commissioner" means the Commissioner of Labor.

(b) "Director" means the director in charge of the bureau referred to in section 3 of this act.

(c) "Wage board" means a board created as provided in section 10 of this act.

(d) "Wages" means any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including any gratuities received by an employee for services rendered for an employer or a customer of an employer and the fair value of any food or lodgings supplied by an employer to an employee. The commissioner may, by regulation, establish the average value of gratuities received by an employee in any occupation and the fair value of food and lodging provided to employees in any occupation, which average values shall be acceptable for the purposes of determining compliance with this act in the absence of evidence of the actual value of such items.

(e) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

(f) "Employ" includes to suffer or to permit to work.

(g) "Employer" includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(h) "Employee" includes any individual employed by an employer.

(i) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(j) "Minimum fair wage order" means a wage order promulgated pursuant to this act.

(k) "Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.

(l) "Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.

(m) "Limousine" means a motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. "Limousine" shall not include taxicabs, hotel or airport shuttles and buses, buses employed solely in transporting school children or teachers to and from school, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

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

Words and phrases defined.

39:1-1. As used in this subtitle, unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

"Alley" means a public highway wherein the roadway does not exceed 12 feet in width.

"Authorized emergency vehicles" means vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Transportation when operated in response to an emergency call.

"Automobile" includes all motor vehicles except motorcycles.

"Berm" means that portion of the highway exclusive of roadway and shoulder, bordering the shoulder but not to be used for vehicular travel.

"Business district" means that portion of a highway and the territory contiguous thereto, where within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the roadway.

"Car pool" means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating capacity of nine passengers or less.

"Commercial motor vehicle" includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Commissioner" means the Director of the Division of Motor Vehicles in the Department of Transportation of this State.

"Commuter van" means a motor vehicle having a seating capacity of not less than seven nor more than 15 adult passengers, in which seven or more persons commute on a daily basis to and from work and which vehicle may also be operated by the driver or other designated persons for their personal use.

"Crosswalk" means that part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the shoulder, or, if none, from the edges of the roadway; also, any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other marking on the surface.

"Dealer" includes every person actively engaged in the business of buying, selling or exchanging motor vehicles or motorcycles and who has an established place of business.

"Department" means the Division of Motor Vehicles in the Department of Transportation of this State acting directly or through its duly authorized officers or agents.

"Deputy commissioner" means deputy director of the Division of Motor Vehicles in the Department of Transportation.

"Deputy director" means deputy director of the Division of Motor Vehicles in the Department of Transportation.

"Director" means the Director of the Division of Motor Vehicles in the Department of Transportation.

"Division" means the Division of Motor Vehicles in the Department of Transportation acting directly or through its duly authorized officers or agents.

"Driver" means the rider or driver of a horse, bicycle or motorcycle or the driver or operator of a motor vehicle, unless otherwise specified.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

"Flammable liquid" means any liquid having a flash point below 200° Fahrenheit, and a vapor pressure not exceeding 40 pounds.

"Gross weight" means the combined weight of a vehicle and a load thereon.

"High occupancy vehicle" or "HOV" means a vehicle which is used to transport two or more persons and shall include public transportation, car pool, van pool, and other vehicles as determined by regulation of the Department of Transportation.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Horse" includes mules and all other domestic animals used as draught animals or beasts of burden.

"Inside lane" means the lane nearest the center line of the roadway.

"Intersection" means the area embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of two or more

highways which join one another at an angle, whether or not one such highway crosses another.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

"Leased limousine" means any limousine subject to regulation in the State which:

a. Is offered for rental or lease, without a driver, to be operated by a limousine service as the lessee, for the purpose of carrying passengers for hire; and

b. Is leased or rented for a period of one year or more following registration.

"Leased motor vehicle" means any motor vehicle subject to registration in this State which:

a. Is offered for rental or lease, without a driver, to be operated by the lessee, his agent or servant, for purposes other than the transportation of passengers for hire; and

b. Is leased or rented for a period of one year or more following registration.

"Limited-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway; and includes any highway designated as a "freeway" or "parkway" by authority of law.

"Local authorities" means every county, municipal and other local board or body having authority to adopt local police regulations under the Constitution and laws of this State, including every county governing body with relation to county roads.

"Magistrate" means any municipal court and the Superior Court, and any officer having the powers of a committing magistrate and the Director of the Division of Motor Vehicles in the Department of Transportation.

"Manufacturer" means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cc. or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motorcycle" includes motorcycles, motor bikes, bicycles with motor attached and all motor-operated vehicles of the bicycle or tricycle type, except motorized bicycles as defined in this section, whether the motive power be a part thereof or attached thereto and having a saddle or seat with driver sitting astride or upon it or a platform on which the driver stands.

"Motor-drawn vehicle" includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Noncommercial truck" means every motor vehicle designed primarily for transportation of property, and which is not a "commercial vehicle."

"Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this subtitle placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

"Omnibus" includes all motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses, if the same are not otherwise used in the transportation of passengers for hire.

"Operator" means a person who is in actual physical control of a vehicle or street car.

"Outside lane" means the lane nearest the curb or outer edge of the roadway.

"Owner" means a person who holds the legal title of a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this subtitle.

"Parking" means the standing or waiting on a street, road or highway of a vehicle not actually engaged in receiving or discharging passengers or merchandise, unless in obedience to traffic regulations or traffic signs or signals.

"Passenger automobile" means all automobiles used and designed for the transportation of passengers, other than omnibuses and school buses.

"Pedestrian" means a person afoot.

"Person" includes natural persons, firms, copartnerships, associations, and corporations.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads, such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

"Private road or driveway" means every road or driveway not open to the use of the public for purposes of vehicular travel.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

"Recreation vehicle" means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping or travel purposes and used solely as a family or personal conveyance.

"Residence district" means that portion of a highway and the territory contiguous thereto, not comprising a business district, where within any 600 feet along such highway there are buildings in use for business or residential purposes which occupy 300 feet or more of frontage on at least one side of the highway.

"Ridesharing" means the transportation of persons in a motor vehicle, with a maximum carrying capacity of not more than 15 passengers, including the driver, where such transportation is incidental to the purpose of the driver. The term shall include such ridesharing arrangements known as car pools and van pools.

"Right-of-way" means the privilege of the immediate use of the highway.

"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways, collectively.

"Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians, which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

"School bus" means every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school for secular or religious education, which complies with the regulations of the Department of

Education affecting school buses, including "School Vehicle Type I" and "School Vehicle Type II" as defined below:

"School Vehicle Type I" means any vehicle with a seating capacity of 17 or more, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the Division of Motor Vehicles and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School Vehicle Type II" means any vehicle with a seating capacity of 16 or less, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the Division of Motor Vehicles and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School zone" means that portion of a highway which is either contiguous to territory occupied by a school building or is where school crossings are established in the vicinity of a school, upon which are maintained appropriate "school signs" in accordance with specifications adopted by the director and in accordance with law.

"School crossing" means that portion of a highway where school children are required to cross the highway in the vicinity of a school.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Shipper" means any person who shall deliver, or cause to be delivered, any commodity, produce or article for transportation as the contents or load of a commercial motor vehicle. In the case of a sealed ocean container, "shipper" shall not be construed to include any person whose activities with respect to the shipment are limited to the solicitation or negotiation of the sale, resale, or exchange of the commodity, produce or article within that container.

"Shoulder" means that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.

"Sidewalk" means that portion of a highway intended for the use of pedestrians, between the curb line or the lateral line of a shoulder, or if none, the lateral line of the roadway and the adjacent right-of-way line.

"Sign." See "Official traffic control devices."

"Slow-moving vehicle" means a vehicle run at a speed less than the maximum speed then and there permissible.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Street" means the same as highway.

"Street car" means a car other than a railroad train, for transporting persons or property and operated upon rails principally within a municipality.

"Stop," when required, means complete cessation from movement.

"Stopping or standing," when prohibited, means any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Suburban business or residential district" means that portion of highway and the territory contiguous thereto, where within any 1,320 feet along that highway there is land in use for business or residential purposes and that land occupies more than 660 feet of frontage on one side or collectively more than 660 feet of frontage on both sides of that roadway.

"Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

"Trackless trolley" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

"Traffic" means pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly, or together, while using any highway for purposes of travel.

"Traffic control signal" means a device, whether manually, electrically, mechanically, or otherwise controlled, by which traffic is alternately directed to stop and to proceed.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Van pooling" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry seven to 15 adult passengers.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

4. R.S.48:16-13 is amended to read as follows:

Definitions.

48:16-13. Except as provided in section 2 of P.L.1997, c.356 (C.48:16-13.1), as used in this article:

"Autocab" means a limousine.

"Limousine" means and includes any automobile or motor car used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. Nothing in this article contained shall be construed to include taxicabs, hotel buses, buses employed solely in transporting school children or teachers, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services, autobuses which are subject to the jurisdiction of the Department of Transportation or interstate autobuses required by federal or State law or regulations of the Department of Transportation to carry insurance against loss from liability imposed by law on account of bodily injury or death.

"Limousine or livery service" means and includes the business of carrying passengers for hire by limousines.

"Person" means and includes any individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever.

"Principal place of business" means, in reference to a municipality, the location of the main place of business of the limousine service in the municipality where limousine service is conducted, where limousines are dispatched, or where limousine drivers report for duty.

"Street" means and includes any street, avenue, park, parkway, highway, or other public place.

5. Section 2 of P.L.1997, c.356 (C.48:16-13.1) is amended to read as follows:

C.48:16-13.1 Limousine defined; county, certain.

2. In a county of the first class with a population density of over 10,000 persons per square mile, according to the latest federal decennial census, "limousine" means and includes any automobile or motor car which is issued special registration plates bearing the word "limousine" pursuant to section 12 of P.L.1979, c.224 (C.39:3-19.5) and is engaged in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. A limousine shall not include a vehicle owned and operated directly or indirectly by a business engaged in the practice of mortuary science when that vehicle is used exclusively for providing transportation related to the provision of funeral services.

C.48:16-18.1 Municipal licensing requirements for limousine service; fee.

6. Notwithstanding any other provisions of law to the contrary, a municipality may require a limousine service to obtain a corporate license, permit, certificate or other form of authority if the limousine service is providing service on an intra-municipal, point-to-point basis within that municipality. The municipality may charge a fee that shall not exceed a total of \$50 for the issuance of that license, permit, certificate or other form of authority which shall apply to all limousines operated by the limousine service and providing intra- municipal, point-to-point service within that municipality.

7. Section 14 of P.L.1999, c.356 (C.48:16-22.4) is amended to read as follows:

C.48:16-22.4 Regulations applicable to out-of State limousines, black cars; definition.

14. a. Except as provided in subsection b. of this section, a limousine registered in another state or the District of Columbia operating in interstate service which picks up or discharges passengers in New Jersey or a black car which picks up and discharges passengers wholly within the State of New Jersey shall comply with the provisions of article 2 of chapter 16 of Title 48 of the Revised Statutes, provided that, with regard to the requirements of R.S.48:16-17, R.S.48:16-18, and R.S.48:16-22, the owner may

have his principal place of business in a location other than a municipality in this State, in which case the owner may elect any municipality in the State of New Jersey in which he has a business address to file the required insurance policy and receive the license to operate.

b. A black car which picks up or discharges passengers in New Jersey in route to or from another state, shall only (1) comply with the provisions of subsection a. of section 11 of P.L.1999, c.356 (C.48:16-22.1) requiring a two-way communications system, which, at a minimum, shall provide for communication to a person outside the vehicle for a distance of not less than 100 miles and which requirement may be satisfied by a mobile telephone, (2) comply with the provisions of subsection b. of section 11 of P.L.1999, c.356 (C.48:16-22.1) requiring a removable first-aid kit and an operable fire extinguisher, which shall be placed in an accessible place within the vehicle and (3) in lieu of the insurance requirements in the amount of \$1,500,000 set forth in R.S.48:16-14, and the requirements of R.S.48:16-17, have proof of insurance in the amounts of not less than \$100,000 liability for bodily injury or death to one person in any one accident and, subject to such limit for any one person so injured or killed, not less than \$300,000 liability for bodily injury or death to more than one person in any one accident. A black car operating in interstate service which picks up or discharges passengers in New Jersey, but does not operate wholly within the State of New Jersey, shall not be subject to any provisions of article 2 of chapter 16 of Title 48 of the Revised Statutes, except the provisions of this subsection and the provisions of R.S.48:16-21 concerning the operation of automobiles in this State but not with reference to ownership and registration.

As used in this section, "black car" means any motor vehicle hired for transportation of passengers and which has a capacity of not more than six passengers that is licensed as a black car in another state, or political subdivision thereof, or the District of Columbia; and whose registered owner holds a franchise from the corporation or other business entity that dispatches such motor vehicle, or who is a member of a cooperative that operates such corporation or other business entity, where such corporation or other business entity has certified to the satisfaction of another state, or political subdivision thereof, or the District of Columbia that more than 90 percent of the corporation's or other business entity's business is on a payment basis other than direct cash payment by a passenger.

8. R.S. 48:16-14 is amended to read as follows:

Insurance policy on limousine.

48:16-14. Except as provided in section 14 of P.L.1999, c.356 (C.48:16-22.4), no limousine shall be operated wholly or partly along any street in any

municipality until the owner of the limousine shall have filed with the clerk of the municipality in which the owner has his principal place of business, an insurance policy of a company duly licensed to transact business under the insurance laws of this State in the sum of \$1,500,000 against loss by reason of the liability imposed by law upon every limousine owner for damages on account of bodily injury or death suffered by any person as the result of an accident occurring by reason of the ownership, maintenance or use of the limousine upon any public street. The insurance company shall supply to the Director of the Division of Motor Vehicles notice concerning all motor vehicle liability insurance policies canceled for non-payment and new policies issued after the effective date of P.L.2001, c.416 (C.48:16-18.1 et al.). The notice shall be supplied monthly. After receipt of the notice of cancellation, the division shall notify the owner of the date the policy was canceled. If the director has not received proof of liability insurance within 30 days of the date the notification was sent to the owner, the director shall suspend the registration of the limousine until new proof is supplied that motor vehicle liability insurance has been secured for the limousine. If the owner fails to provide proof of insurance or surrender the license plates within 60 days of the date the notification was sent to him by the division, the division shall suspend the owner's corporation code registration privilege.

Such operation shall be permitted only so long as the insurance policy shall remain in force to the full and collectible amount of \$1,500,000.

The insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and use of such limousine or any fault in respect thereto, and shall be for the benefit of every person suffering loss, damage or injury as aforesaid.

C.48:16-22.3a Requirements for applicants as limousine operator, driver.

9. a. Any person who owns a limousine service shall require an applicant for employment as a limousine operator or driver to provide the applicant's name, address, citizenship status, a form of photographic identification, birth certificate, and such other information as the Commissioner of Transportation, hereinafter the commissioner, may require.

b. An applicant subject to the provisions of subsection a. of this section shall submit to being fingerprinted by the Division of State Police in the Department of Law and Public Safety or by agents appointed by or under contract to the division. The applicant also shall provide written consent to the performance of a criminal history record background check. The commissioner is authorized to exchange fingerprint data and photographic identification with and receive criminal history record background information results from the Federal Bureau of Investigation and the

Division of State Police. The division shall inform the commissioner if an applicant's criminal history record background check reveals a conviction of a disqualifying crime as specified in subsection d. of this section. The applicant shall bear the cost of fingerprinting and the cost for the background checks, including all costs of administering and processing the checks. As used in this section, "criminal history record background check" means a determination of whether a person has a criminal record by cross-referencing that person's name and fingerprint data with those on file with the Federal Bureau of Investigation, Identification Division and the State Bureau of Identification in the Division of State Police.

c. No applicant shall be permitted to operate or drive a limousine unless the applicant is 21 years of age or older and unless the commissioner provides written notification to the owner of the limousine service of the commissioner's determination that the applicant is qualified for employment as a limousine operator or driver.

d. An applicant shall be disqualified from operating or driving a limousine if the applicant's criminal history record background check reveals a record of conviction of any of the following crimes:

(1) In New Jersey or elsewhere any crime as follows: aggravated assault, arson, burglary, escape, extortion, homicide, kidnaping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2.

(2) In any other state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, as a result of a conviction in a court of competent jurisdiction, a crime which in that other jurisdiction or country is comparable to one of the crimes enumerated in paragraph (1) of subsection d. of this section.

e. The commissioner is authorized to adopt regulations, pursuant to the "Administrative Procedure Act, " P.L.1968, c. 410 (C.52:14B-1 et seq.), to effectuate the purposes of this section.

f. The provisions of this section shall apply to persons making applications for employment on or after the effective date of P.L.2001, c.416 (C.48:16-18.1 et al.).

C.48:16-22.3b Applicants to be tested for controlled dangerous substances; regulations.

10. Any person who owns a limousine service shall require an applicant for employment as a limousine operator or driver to be tested, at the

applicant's expense, for dangerous controlled substances as defined in N.J.S.2C:35-2. Upon the advice of the State Limousine Advisory Committee, the Commissioner of Transportation shall adopt regulations, pursuant to the "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et seq.), for the licensing and testing of applicants for employment as limousine operators or drivers. The regulations shall be substantially similar to the regulations of New York City concerning the testing of an applicant for a for-hire vehicle driver's license pursuant to section 6-15 of Title 35 of the New York City Rules and Regulations.

11. Section 18 of P.L.1999, c.356 (C.39:5G-1) is amended to read as follows:

C.39:5G-1 Penalties for violations of limousine laws; enforcement.

18. A person who shall own and operate a limousine in any street in this State in violation of the provisions of article 2 of chapter 16 of Title 48 of the Revised Statutes or of Title 39 of the Revised Statutes shall be subject to the following penalties:

a. (1) For operating a limousine without a license issued by a municipality pursuant to R.S.48:16-17, knowingly permitting a driver to operate a limousine without a validly issued driver's license or a validly issued commercial driver license if required pursuant to N.J.A.C.13:21-23.1, failure to have filed an insurance policy in the amount of \$1,500,000 which is currently in force as provided in R.S.48:16-14 or in the amounts required pursuant to section 14 of P.L.1999, c.356 (C.48:16-22.4), operating a limousine in which the number of passengers exceeds the maximum seating capacity as provided in R.S.48:16-13 or section 2 of P.L.1997, c.356 (C.48:16-13.1): a fine of \$2,500 for the first offense and a fine of \$5000 for the second or subsequent offense;

(2) For operating a limousine without the special registration plates required pursuant to section 12 of P.L.1979, c.224 (C.39:3-19.5), or operating a limousine without the limousine being properly inspected as provided in R.S.39:8-1: a fine of \$1,250 for the first offense and a fine of \$2,500 for the second or subsequent offense;

(3) For operating a limousine without the attached sideboards required by section 11 of P.L.1999, c.356 (C.48:16-22.1), failure to retain within the limousine appropriate proof of insurance or failure to execute and deliver to the Director of the Division of Motor Vehicles the power of attorney required pursuant to R.S.48:16-16: a fine of \$250 for the first offense and \$500 for the second and subsequent offense;

(4) For failure to be equipped with a two-way communications system, a removable first-aid kit or an operable fire extinguisher as required by

section 11 of P.L.1999, c.356 (C.48:16-22.1), or any other violation of the provisions of article 2 of chapter 16 of Title 48 of the Revised Statutes other than those enumerated in this subsection: a fine of \$50 for the first offense and \$100 for the second and subsequent offense.

b. Violations of this section shall be enforced and penalties collected in a summary proceeding pursuant to "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court or any municipal court where the violation was detected, or where the defendant was apprehended, shall have jurisdiction to enforce this section. Penalties imposed pursuant to this section shall be in addition to those otherwise imposed according to law. All penalties collected pursuant to the provisions of this section shall be forwarded as provided in R.S.39:5-40 and subsection b. of R.S.39:5-41.

12. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 417

AN ACT concerning the New Jersey Commission on Native American Affairs and amending P.L.1995, c.295.

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

Title amended.

1. The Title of P.L.1995, c.295 is amended to read as follows:

AN ACT establishing the New Jersey Commission on American Indian Affairs and supplementing Title 52 of the Revised Statutes.

2. Section 1 of P.L.1995, c.295 (C.52:16A-53) is amended to read as follows:

C.52:16A-53 New Jersey Commission on American Indian Affairs; members.

1. There is established in the Department of State the New Jersey Commission on American Indian Affairs. The commission shall consist of nine members: the Secretary of State, serving *ex officio*, and eight public members, not more than four of whom shall be from the same political party. Two of the public members shall be members of the Nanticoke Lenni Lenape Indians, to be appointed by the Governor on the recommendation of the Confederation of the Nanticoke Lenni Lenape Tribes and with the

advice and consent of the Senate. Two of the public members shall be members of the Ramapough Mountain Indians, to be appointed by the Governor on the recommendation of the Ramapough Mountain Indians and with the advice and consent of the Senate. Two of the public members shall be members of the Powhatan Renape Nation, to be appointed by the Governor on the recommendation of the Powhatan Renape Nation and with the advice and consent of the Senate. Two of the public members shall be members of the Intertribal People, to be appointed by the Governor on the recommendation of the Intertribal People and with the advice and consent of the Senate. "Intertribal People" means American Indians who reside in New Jersey and are not members of the Nanticoke Lenni Lenape Indians, the Ramapough Mountain Indians, or the Powhatan Renape Nation, but are enrolled members of another tribe recognized by another state or the federal government.

3. Section 3 of P.L.1995, c.295 (C.52:16A-55) is amended to read as follows:

C.52:16A-55 Election of chairperson.

3. The commission shall organize as soon as may be practicable after the appointment of its members and shall elect a chairperson from among its public members, who may serve as the chairperson for the duration of his or her term on the commission, and may appoint a secretary who need not be a member of the commission. The commission shall meet at least once every three months and upon the call of the chairperson or of a majority of its members. The presence of a majority of the membership of the commission shall be required for the conduct of official business.

4. Section 4 of P.L.1995, c. 295 (C.52:16A-56) is amended to read as follows:

C.52:16A-56 Commission duties.

4. The commission shall:
- a. develop programs and projects relating to the cultural, educational and social development of New Jersey's American Indian communities;
 - b. develop programs and projects which further understanding of New Jersey's American Indian history and culture;
 - c. promote increased cooperation among all American Indian communities in the State;
 - d. serve as a Statewide reference and resource center to increase public knowledge of New Jersey's American Indian heritage;
 - e. act as a liaison among American Indian communities, the State and federal governments, and educational, social and cultural institutions;

f. be authorized to raise funds, through direct solicitation or other fund raising events, alone or with other groups, and accept gifts, grants and bequests from individuals, corporations, foundations, governmental agencies, public and private organizations and institutions, to defray the commission's administrative expenses and carry out the purposes of P.L.1995, c.295 (C.52:16A-53 et seq.), as amended and supplemented; and

g. when requested by the Governor, assist the Legislature and Governor to investigate the authenticity of any organization, tribe, nation or other group seeking official recognition by the State as an American Indian tribe and submit a report of its findings to the Legislature and Governor within 180 days of the completion of an investigation. Nothing in this subsection shall be construed as authorizing the commission to recognize the authenticity of any organization, tribe, nation or other group as an American Indian tribe, which recognition shall require specific statutory authorization, nor shall this subsection be construed as in any way limiting the scope of information that may be considered in determining whether to grant such statutory recognition.

5. Section 5 of P.L.1995, c.295 (C.52:16A-57) is amended to read as follows:

C.52:16A-57 Expenses incurred.

5. The commission may incur such traveling and other miscellaneous expenses, including expenses to maintain an office on State property, as it deems 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.

6. Section 6 of P.L.1995, c.295 (C.52:16A-58) is amended to read as follows:

C.52:16A-58 Authority of commission.

6. The commission shall be authorized to:

a. call to its assistance and avail itself of the services and assistance of such officials and employees of the State and its political subdivisions and their departments, boards, bureaus, commissions, authorities and agencies, as it may require and as may be available to it for its purposes;

b. utilize existing staff from the Department of State until such time as it may be necessary to employ professional staff, including an executive director and stenographic and clerical assistants; and

c. expend any funds that may be appropriated or otherwise made available to it for its purposes.

Professional staff, including stenographic and clerical assistants, may be permitted to serve the commission on a volunteer basis. To the extent possible, the commission shall be permitted to use property owned by the State, without charge or at a minimal fee, for its offices.

The commission shall submit a spending plan to the Secretary of State for review and approval no later than October 1 of each year that lists the sources of all funds raised and actual expenses during the previous State fiscal year and the commission's projected revenues and expenditures during the State fiscal year in which the plan is submitted.

7. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 418

AN ACT concerning the review of coastal development, and amending P.L.1993, c.190.

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

1. Section 7 of P.L.1993, c.190 (C.13:19-5.2) is amended to read as follows:

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

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

a. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or a final municipal building or construction permit on or prior to July 19, 1994, or a residential development which has received preliminary subdivision approval or minor subdivision approval on or prior to July 19, 1994 where no subsequent site plan approval is required, provided that, in any of the cases identified above, construction begins within three years of July 19, 1994, and continues to completion with no lapses in construction activity of more than one year. This subsection shall not apply to any development that required a permit pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) prior to July 19, 1994;

b. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God,

provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and federal law;

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

- (1) the enlargement of the footprint of the development; or
- (2) an increase in the number of dwelling units within the development;

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

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

- (1) the routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways;
- (2) public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; or
- (3) public highway signing, lighting, guiderail and other nonintrusive safety projects;

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

g. The enclosure of an establishment offering dining, food services and beverages that was in operation as of December 18, 2000 and is located upon a functional pier, provided the enclosure only includes an open area which was actively used in the operation of the establishment.

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

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 419

AN ACT concerning foster care and supplementing Title 30 of the Revised Statutes.

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

C.30:4C-27.3 Short title.

1. This act shall be known and may be cited as the "Foster Parent Licensing Act."

C.30:4C-27.4 Findings, declarations relative to foster care.

2. The Legislature finds and declares that: each child requiring foster care should reside in a safe home with a nurturing substitute family who can meet the child's individual needs; the most effective way to ensure the health, safety, general well-being and physical, emotional, social and educational needs of a child residing in a foster home is to require the annual inspection and monitoring of a foster home and to obligate a person to secure and maintain a license in order to provide foster care to a child; therefore, it is in the public interest to license foster parents and regulate foster homes in order to ensure the safety, health and proper development of children placed in foster care.

C.30:4C-27.5 Definitions relative to foster care.

3. As used in this act:

"Child" means a person who: is either under the age of 18 or meets the criteria set forth in subsection f. of section 2 of P.L.1972, c.81 (C.9:17B-2); and is under the care or custody of the division or another public or private agency authorized to place children in New Jersey.

"Commissioner" means the Commissioner of Human Services.

"Department" means the Department of Human Services.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Foster home" or "home" means a private residence, other than a children's group home or shelter home, in which board, lodging, care and temporary out-of-home placement services are provided by a foster parent on a 24-hour basis to a child under the auspices of the division or any public or private agency authorized to place children in New Jersey.

"Foster parent" means a person who has been licensed pursuant to this act to provide foster care to five or fewer children, except that the division may license a foster parent to provide care for more than five children, if necessary, to keep sibling groups intact or to serve the best interests of the children in the home.

"License" means a document issued by the division to a person who meets the requirements of this act to provide foster care to children in the person's home.

C.30:4C-27.6 Licensure required for foster parents.

4. a. A person shall not provide foster care to a child unless the person is licensed by the division pursuant to this act. The license shall be issued to a specific person for a specific residence and shall not be transferable to another person or residence. The foster parent shall maintain the license on file at the foster home.

b. A person desiring to provide foster care to a child shall apply to the division for a license in a manner and form prescribed by the commissioner.

c. A foster parent applicant or foster parent shall be of good moral character.

d. A foster parent applicant or foster parent, as applicable, shall:

(1) Complete the license application form provided by the division;

(2) Provide written consent for the division to conduct a check of its child abuse records pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11);

(3) Provide written consent from each adult member of the foster parent applicant's household for the division to conduct a child abuse record information check on that person; and

(4) Immediately notify the division when a new adult becomes a resident of the foster parent applicant's or foster parent's household in order to ensure that the department can conduct a criminal history record background check pursuant to section 1 of P.L.1985, c.396 (C.30:4C-26.8) and the division can conduct a child abuse record information check on the new adult household member.

e. As a condition of securing a license, the applicant shall participate in pre-service training in accordance with standards adopted by the commissioner pursuant to this act.

f. A foster parent licensed pursuant to this act shall participate in a minimum of 14 hours of in-service training in every 24-month period in accordance with standards adopted by the commissioner pursuant to this act.

C.30:4C-27.7 Child abuse record information check required, conditions.

5. a. The division shall conduct a child abuse record information check of the division's child abuse records to determine if an incident of child abuse or neglect has been substantiated, pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11), against a foster parent applicant or any adult member of the foster parent applicant's household, upon receipt of written consent from the foster parent applicant or any adult member of the foster parent applicant's household pursuant to subsection d. of section 4 of this act.

The division shall consider, for the purposes of this act, any incidents of child abuse or neglect that were substantiated on or after June 29, 1995, to ensure that a foster parent applicant or adult member of the foster parent applicant's household has had an opportunity to appeal a substantiated finding of child abuse or neglect pursuant to N.J.A.C.10:120A-1.1 et seq., except that the division may consider substantiated incidents prior to that date if the division, in its judgment, determines that the foster parent applicant or adult household member poses a risk of harm in a foster home. In cases involving incidents substantiated prior to June 29, 1995, the division shall offer the foster parent applicant or adult member of the foster

parent applicant's household an opportunity for a hearing to contest its action restricting the foster parent applicant from providing foster care to a child.

b. (1) The division shall conduct an annual on-site inspection of a foster home and evaluate the foster home to determine whether it complies with the provisions of this act.

(2) The division may, without prior notice, inspect and examine a foster home and inspect all documents, records, files or other data required to be maintained by a foster parent pursuant to this act.

c. If an applicant meets the requirements of this act, the division shall issue a license to that person.

d. (1) The license shall be valid for three years, subject to the foster parent's continued compliance with the provisions of this act.

(2) The division shall determine if the license shall be renewed based upon the results of the annual on-site inspection and evaluation of the foster home conducted pursuant to this section. If the on-site inspection and evaluation indicate the foster home's full or substantial compliance with the provisions of this act, the division shall renew the license.

C.30:4C-27.8 Criminal history record background check required for licensure.

6. a. The department shall ensure that a State and federal criminal history record background check is conducted on a foster parent applicant and any adult member of the foster parent applicant's household pursuant to the provisions of section 1 of P.L.1985, c.396 (C.30:4C-26.8).

b. The Division of State Police in the Department of Law and Public Safety shall promptly notify the division in the event a foster parent or any adult member of the foster parent's household, who was the subject of a criminal history record background check conducted pursuant to this section, is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of such notification, the division shall make a determination whether to suspend or revoke the foster parent's license.

C.30:4C-27.9 Denial, suspension, revocation of license.

7. The division may deny, suspend or revoke a license for good cause, including, but not limited to:

a. Failure of a foster parent applicant or foster parent to comply with the provisions of this act;

b. Failure of a foster parent applicant or any adult member of the foster parent applicant's household to consent to, or cooperate in, the securing of a criminal history record background check pursuant to section 1 of P.L.1985, c.396 (C.30:4C-26.8) or a division child abuse record information check pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11);

c. The conviction of a foster parent applicant or any adult member of the foster parent applicant's household of a crime enumerated under section 1 of P.L.1985, c.396 (C.30:4C-26.8);

d. A determination that an incident of child abuse or neglect by a foster parent applicant or any adult member of the foster parent applicant's household has been substantiated, except that the division may issue the license if the division determines that the foster parent applicant or adult household member poses no continuing risk of harm to the child and the issuance of the license is in the child's best interests;

e. Violation of the terms and conditions of a license;

f. Use of fraud or misrepresentation by a foster parent applicant or foster parent in obtaining a license;

g. Refusal by a foster parent applicant or foster parent to furnish the division with information, files, reports or records required for compliance with the provisions of this act;

h. Refusal by a foster parent applicant or foster parent to permit an inspection of a foster home by an authorized representative of the division; and

i. Any conduct, engaged in or permitted, which adversely affects or presents a serious hazard to the education, health, safety, general well-being or physical, emotional and social development of the child residing in the foster home, or which otherwise fails to comply with the standards required for the provision of foster care to a child and the maintenance of a foster home.

C.30:4C-27.10 Notice before denial, suspension, revocation of license, hearing.

8. Before denying, suspending or revoking a license, the division shall give notice to a foster parent applicant or foster parent personally or by mail to the last known address of the foster parent applicant or foster parent with return receipt requested. The notice shall afford the foster parent applicant or foster parent the opportunity to be heard and to contest the division's action. The hearing shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.30:4C-27.11 Judicial review.

9. A person aggrieved by a final decision of the division is entitled to seek judicial review in the Appellate Division of the Superior Court. All petitions for review shall be filed in accordance with the Rules of Court.

C.30:4C-27.12 Fraud, misrepresentation, fourth degree crime.

10. A person who uses fraud or misrepresentation in obtaining a license, or offers, advertises or provides any service not authorized by a valid license is guilty of a crime of the fourth degree.

C.30:4C-27.13 Certified foster parent may continue to provide care pending licensing.

11. a. Notwithstanding the provisions of this act to the contrary, a foster parent certified by the division on or prior to the effective date of this act may continue to provide foster care to a child until the division conducts an on-site inspection and reevaluation of the foster parent's home, no later than two years following the date of the home's last certification inspection and reevaluation, to determine whether the home complies with the provisions of this act. If the on-site inspection and reevaluation indicate the foster home's full or substantial compliance with the provisions of this act, the division shall issue a license to the foster parent.

b. A foster parent who was not certified by the division on or prior to the effective date of this act shall apply to the division for a license within 90 days of the effective date of this act and may continue to provide foster care to a child until the division conducts an on-site inspection and evaluation of the foster parent's home to determine whether the home complies with the provisions of this act. If the on-site inspection and evaluation indicate the foster home's full or substantial compliance with the provisions of this act, the division shall issue a license to the foster parent.

C.30:4C-27.14 Report to Governor, Legislature.

12. The commissioner shall report to the Governor and the Legislature no later than six months after the effective date of this act in an interim report, and no later than 12 months after the effective date of this act in a final report, on the implementation of this act. The reports shall include:

a. the number of licenses that were approved, denied, suspended or revoked;

b. the number of licenses that were denied, suspended or revoked as a result of the criminal history record background and division child abuse record information checks conducted pursuant to this act;

c. data on the progress of implementing the recommendations contained in the division's Strategic Plan regarding the improvement of the State's foster care system; and

d. recommendations for modifying the provisions of this act, which the commissioner believes to be necessary and appropriate.

C.30:4C-27.15 Rules, regulations.

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

The regulations shall include standards governing: the safety and adequacy of the physical premises of a foster home; the health, safety, general well-being and physical, emotional, social and educational needs of

a child in foster care; the training of a foster parent; the responsibility of a foster parent to participate in the case plan of a child in foster care and to allow access by the division to the child; the maintenance and confidentiality of records and furnishing of required information to the division; the transportation of a child in foster care; and the provision of other needed services on behalf of a child in foster care. The commissioner shall also adopt rules and regulations for license application, issuance, denial, suspension and revocation.

b. Nothing in this act shall be construed to permit the department to adopt any code or standard that exceeds the standards established pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.).

14. This act shall take effect on the 90th day after enactment.

Approved January 8, 2002.

CHAPTER 420

AN ACT concerning graduated driver licensing and drivers' schools and amending R.S.39:3-10, R.S.39:3-13, P.L.1998, c.108, P.L.1977, c.23, P.L.1942, c.334, P.L.1977, c.25, P.L.1950, c.127, P.L.1951, c.216 and supplementing chapter 3 and chapter 12 of Title 39 of the Revised Statutes.

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

1. Section 8 of P.L.1998, c.108 (C.27:5F-41) is amended to read as follows:

C.27:5F-41 Development of curriculum guidelines for safe operation of motor vehicles.

8. a. The Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety, after consultation with the Director of the Division of Motor Vehicles in the Department of Transportation and the Review Board on Driver Education established in section 10 of P.L.1998, c.108 (C.27:5F-43), shall develop curriculum guidelines for use by teachers of approved classroom driver education courses. The course of instruction for approved courses shall be no less than 30 hours in length and be designed to develop and instill the knowledge and attitudes necessary for the safe operation and driving of motor vehicles. Defensive driving, highway courtesy, accident avoidance, understanding and respect for the

State's motor vehicle laws, insurance fraud and State requirements for and benefits of maintaining automobile insurance shall be emphasized. The incorporation of these curriculum guidelines in these classroom courses and the use of related instructional materials shall be a requirement for approval of the course by the Director of the Division of Motor Vehicles.

b. The Director of the Office of Highway Traffic Safety, in consultation with the Director of the Division of Motor Vehicles, shall produce an informational brochure for parents and guardians of beginning drivers under the age of 18 years. The division shall ensure that the parents or guardians of a permit holder receive these brochures at the time a permit is issued to a beginning driver. The brochures shall include, but not be limited to, the following information:

- (1) Setting an example for the beginning driver;
- (2) Accident and fatality statistics about beginning drivers;
- (3) Causes of accidents among beginning drivers;
- (4) The need to supervise vehicle operation by a beginning driver;
- (5) Methods to coach a beginning driver on how to reduce accidents;
- (6) A description of the graduated driver's license program; and
- (7) Benefits of classroom and behind-the-wheel driver education under the direction of State certified or licensed driving instructors, as the case may be.

2. Section 10 of P.L.1998, c.108 (C.27:5F-43) is amended to read as follows:

C.27:5F-43 State Review Board on Driver Education; guidelines for driver education.

10. a. There is established a State Review Board on Driver Education. The Director of the Office of Highway Traffic Safety or his designee shall be ex officio the chairman of the board. The Governor shall appoint to the board a certified secondary school driver education teacher and representatives from the Department of Education, the Department of Transportation, the AAA Clubs of New Jersey, the Driving School Association of New Jersey, the Insurance Council of New Jersey, the New Jersey Association of Chiefs of Police, the New Jersey State Safety Council and the New Jersey Traffic Safety Officers Association. The board shall make recommendations to the Director of the Division of Motor Vehicles with respect to rules and regulations promulgated under this act including, but not limited to, the development of uniform curriculum guidelines for approved classroom and behind-the-wheel driver education. Any vacancies occurring in the membership shall be filled in the same manner as the original appointments.

b. The course of instruction for behind-the-wheel driver education shall be designed to develop the skills necessary for the safe and lawful operation of a motor vehicle. Defensive driving, highway courtesy,

appropriate driving behavior and attitudes, accident avoidance, safe passing and lane changing, and a general understanding of and respect for the State's motor vehicle laws shall be emphasized.

3. R.S.39:3-10 is amended to read as follows:

Licensing of drivers; classifications.

39:3-10. No person shall drive a motor vehicle on a public highway in this State unless the person is under supervision while participating in a behind-the-wheel driving course pursuant to section 6 of P.L.1977, c.25 (C.39:3-13.2a) or is in possession of a validated permit, or a provisional or basic driver's license issued to him in accordance with this article.

No person under 18 years of age shall be issued a basic license to drive motor vehicles, nor shall a person be issued a validated permit, including a validated examination permit, until he has passed a satisfactory examination and other requirements as to his ability as an operator. The examination shall include a test of the applicant's vision, his ability to understand traffic control devices, his knowledge of safe driving practices and of the effects that ingestion of alcohol or drugs has on a person's ability to operate a motor vehicle, his knowledge of such portions of the mechanism of motor vehicles as is necessary to insure the safe operation of a vehicle of the kind or kinds indicated by the applicant and of the laws and ordinary usages of the road. No person shall sit for an examination for any permit without exhibiting photo identification deemed acceptable by the director, unless that person is a high school student participating in a course of driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State, pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1). A road test shall be required for a provisional license and serve as a demonstration of the applicant's ability to operate a vehicle of the class designated. No person shall sit for a road test unless that person exhibits photo identification deemed acceptable by the director. A high school student who has completed a course of behind-the-wheel automobile driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State, who has been issued a special learner's permit pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1) prior to January 1, 2003, shall not be required to exhibit photo identification in order to sit for a road test. The road test shall be given on public streets, where practicable and feasible, but may be preceded by an off-street screening process to assess basic skills. The director shall approve locations for the road test which pose no more than a minimal risk of injury to the applicant, the examiner and other motorists. No new locations for the road test shall be approved unless the test can be given on public streets.

The director shall issue a basic driver's license to operate a motor vehicle other than a motorcycle to a person over 18 years of age who previously has not been licensed to drive a motor vehicle in this State or another jurisdiction only if that person has: (1) operated a passenger automobile in compliance with the requirements of this title for not less than one year, not including any period of suspension or postponement, from the date of issuance of a provisional license pursuant to section 4 of P.L.1950, c.127 (C.39:3-13.4); (2) not been assessed more than two motor vehicle points; (3) not been convicted in the previous year for a violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), P.L.1992, c.189 (C.39:4-50.14), R.S.39:4-129, N.J.S.2C:11-5, subsection c. of N.J.S. 2C:12-1, or any other motor vehicle-related violation the director determines to be significant and applicable pursuant to regulation; and (4) passed an examination of his ability to operate a motor vehicle pursuant to this section.

The director shall expand the driver's license examination by 20%. The additional questions to be added shall consist solely of questions developed in conjunction with the State Department of Health and Senior Services concerning the use of alcohol or drugs as related to highway safety. The director shall develop in conjunction with the State Department of Health and Senior Services supplements to the driver's manual which shall include information necessary to answer any question on the driver's license examination concerning alcohol or drugs as related to highway safety.

Up to 20 questions may be added to the examination on subjects to be determined by the director that are of particular relevance to youthful drivers, after consultation with the Director of the Office of Highway Traffic Safety.

The director shall expand the driver's license examination to include a question asking whether the applicant is aware of the provisions of the "Uniform Anatomical Gift Act," P.L.1969, c.161 (C.26:6-57 et seq.) and the procedure for indicating on the driver's license the intention to make a donation of body organs or tissues pursuant to P.L.1978, c.181 (C.39:3-12.2).

Any person applying for a driver's license to operate a motor vehicle or motorized bicycle in this State shall surrender to the director any current driver's license issued to him by another state or jurisdiction upon his receipt of a driver's license for this State. The director shall refuse to issue a driver's license if the applicant fails to comply with this provision. An applicant for a permit or license who is less than 18 years of age, and who holds a permit or license for a passenger automobile issued by another state or country that is valid or has expired within a time period designated by the director, shall be subject to the permit and license requirements and penalties applicable to State permit and license applicants who are of the same age; except that

if the other state or country has permit or license standards substantially similar to those of this State, the credentials of the other state or country shall be acceptable.

The director shall create classified licensing of drivers covering the following classifications:

a. Motorcycles, except that for the purposes of this section, motorcycle shall not include any three-wheeled motor vehicle equipped with a single cab with glazing enclosing the occupant, seats similar to those of a passenger vehicle or truck, seat belts and automotive steering;

b. Omnibuses as classified by R.S.39:3-10.1 and school buses classified under N.J.S.18A:39-1 et seq.;

c. (Deleted by amendment, P.L.1999, c.28).

d. All motor vehicles not included in classifications a. and b. A license issued pursuant to this classification d. shall be referred to as the "basic driver's license."

Every applicant for a license under classification b. shall be a holder of a basic driver's license. Any issuance of a license under classification b. shall be by endorsement on the basic driver's license.

A driver's license for motorcycles may be issued separately, but if issued to the holder of a basic driver's license, it shall be by endorsement on the basic driver's license.

The director, upon payment of the lawful fee and after he or a person authorized by him has examined the applicant and is satisfied of the applicant's ability as an operator, may, in his discretion, issue a license to the applicant to drive a motor vehicle. The license shall authorize him to drive any registered vehicle, of the kind or kinds indicated, and shall expire, except as otherwise provided, on the last day of the 48th calendar month following the calendar month in which such license was issued.

The director may, at his discretion and for good cause shown, issue licenses which shall expire on a date fixed by him. If the director issues a license to a person who has demonstrated authorization to be present in the United States for a period of time shorter than the standard period of the license, the director shall fix the expiration date of the license at a date based on the period in which the person is authorized to be present in the United States under federal immigration laws. The director may renew such a license only if it is demonstrated that the person's continued presence in the United States is authorized under federal law. The fee for licenses with expiration dates fixed by the director shall be fixed by the director in amounts proportionately less or greater than the fee herein established.

The required fee for a license for the 48-month period shall be as follows:

Motorcycle license or endorsement	\$18
Omnibus or school bus endorsement	\$18
Basic driver's license	\$18

The director shall waive the payment of fees for issuance of omnibus endorsements whenever an applicant establishes to the director's satisfaction that said applicant will use the omnibus endorsement exclusively for operating omnibuses owned by a nonprofit organization duly incorporated under Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes.

The director shall issue licenses for the following license period on and after the first day of the calendar month immediately preceding the commencement of such period, such licenses to be effective immediately.

All applications for renewals of licenses shall be made in a manner prescribed by the director and in accordance with procedures established by him.

The director in his discretion may refuse to grant a permit or license to drive motor vehicles to a person who is, in his estimation, not a proper person to be granted such a permit or license, but no defect of the applicant shall debar him from receiving a permit or license unless it can be shown by tests approved by the Director of the Division of Motor Vehicles that the defect incapacitates him from safely operating a motor vehicle.

In addition to requiring an applicant for a driver's license to submit satisfactory proof of identity and age, the director also shall require the applicant to provide, as a condition for obtaining a permit and license, satisfactory proof that the applicant's presence in the United States is authorized under federal law.

If the director has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the director shall refuse to grant the permit or license until such time as the document may be verified by the issuing agency to the director's satisfaction.

A person violating this section shall be subject to a fine not exceeding \$500 or imprisonment in the county jail for not more than 60 days, but if that person has never been licensed to drive in this State or any other jurisdiction, he 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 motor vehicle to the person for a period of not less than 180 days. The penalties provided for by this paragraph 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.

Nothing in this section shall be construed to alter or extend the expiration of any license issued prior to the date this amendatory and supplementary act becomes operative.

4. Section 1 of P.L.1977, c.23 (C.39:3-10b) is amended to read as follows:

C.39:3-10b Applications for motorcycle license.

1. An applicant for a motorcycle license, but not for a motorcycle endorsement to a basic license, who previously has never been licensed to drive a motor vehicle in this, or any other state, shall, during the permit period, be subject to the applicable restrictions and penalties for examination permit holders as provided under R.S.39:3-13. Until the provisions of P.L.1998, c.108, as amended by P.L.2001, c.420, are fully implemented, all holders of permits issued pursuant to R.S.39:3-13 and section 6 of P.L.1977, c.25 (C.39:3-13.2a) shall be subject to a probationary driver program for the two-year period immediately following the issuance of the permits. This two-year period shall not be altered if the permit holder obtains a provisional driver's license pursuant to section 4 of P.L.1950, c.127 (C.39:3-13.4). All holders of permits issued on or after the date of full implementation of P.L.1998, c.108, as amended by P.L.2001, c.420, shall not be subject to this section.

5. Section 1 of P.L.1942, c. 324 (C.39:3-11.1) is amended to read as follows:

C.39:3-11.1 License to persons 16 years of age to drive motor vehicles in agricultural pursuits.

1. Any person, under seventeen years of age and not under sixteen years of age, may be licensed to drive motor vehicles in agricultural pursuits as herein limited; provided such person has passed an examination satisfactory to the director as to his ability as an operator. The director, upon payment of the lawful fee and after he or a person authorized by him has examined the applicant and is satisfied of the applicant's ability as an operator, may, in his discretion, license the applicant to drive any motor vehicle which is registered under the provisions of R.S.39:3-24 and R.S.39:3-25. The holder of an agricultural permit or license shall be subject to the applicable requirements, restrictions and penalties for special learner's permit holders provided under section 6 of P.L.1977, c.25 (C.39:3-13.2a). Such registration shall expire on March thirty-first of each year terminating the period for which such license is issued. The annual license fee for such license shall be one dollar (\$1.00), and is for the limited use herein provided, and is not to be used in the operation of any other vehicle and shall have the name of the licensee endorsed thereon in his own handwrit-

ing. The holder of an agricultural license shall be entitled to a provisional driver's license upon attaining the age of 17 years and shall be subject to applicable restrictions and penalties in section 4 of P.L.1950, c.127 (C.39:3-13.4) as they pertain to a provisional driver's license holder.

6. R.S.39:3-13 is amended to read as follows:

Examination permits.

39:3-13. The director may, in his discretion, issue to a person over 17 years of age an examination permit, under the hand and seal of the director, allowing such person, for the purpose of fitting himself to become a licensed driver, to operate a designated class of motor vehicles other than passenger automobiles and motorcycles of persons licensed to operate motorcycles only for a specified period of not more than 90 days, while in the company and under the supervision of a driver licensed to operate such designated class of motor vehicles.

The director, in his discretion, may issue for a specified period of not less than one year a passenger automobile or motorcycle-only examination permit to a person over 17 years of age regardless of whether a person has completed a course of behind-the-wheel automobile driving education pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1). An examination permit applicant who is under 18 years of age shall obtain the signature of a parent or guardian for submission to the division on a form prescribed by the director. The director shall postpone for six months the driving privileges of any person who submits a fraudulent signature for a parent or guardian.

For six months immediately following the validation of an examination permit, and until the holder passes the road test, the holder who is less than 21 years of age shall operate the passenger automobile or motorcycle only when accompanied by, and under the supervision of, a New Jersey licensed driver who is at least 21 years of age and has been licensed to drive a passenger automobile or motorcycle, as the case may be, for not less than three years. The holder of an examination permit who is at least 21 years of age shall operate the passenger automobile or motorcycle for the first three months under such supervision and until the holder passes the road test. The supervising driver of the passenger automobile shall sit in the front seat of the vehicle. Whenever operating a vehicle while in possession of an examination permit, the holder of the permit shall operate the passenger automobile with only one additional passenger in the vehicle excluding persons with whom the holder resides, except that this passenger restriction shall not apply when either the permit holder or one other passenger is at least 21 years of age. Further, the holder of the permit who is less than 21

years of age shall not drive during the hours between 12:01 a.m. and 5 a.m.; provided, however, that this condition may be waived for an emergency which, in the judgment of local police, is of sufficient severity and magnitude to substantially endanger the health, safety, welfare or property of a person, or for any bona fide employment or religion-related activity if the employer or appropriate religious authority provides written verification of such activity in a manner provided for by the director. The holder of the examination permit shall not use any interactive wireless communication device, except in an emergency, while operating a moving passenger automobile on a public road or highway. "Use" shall include, but not be limited to, talking or listening on any interactive wireless communication device or operating its keys, buttons or other controls. The passenger automobile permit holder shall ensure that all occupants of the vehicle are secured in a properly adjusted and fastened seat belt or child restraint system.

When notified by a court of competent jurisdiction that an examination permit holder has been convicted of a violation which causes the permit holder to accumulate more than two motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the director deems significant and applicable pursuant to regulation, in addition to any other penalty that may be imposed, the director shall, without the exercise of discretion or a hearing, suspend the examination permit holder's examination permit for 90 days. The director shall restore the permit following the term of the permit suspension if the permit holder satisfactorily completes a remedial training course of not less than four hours which may be given by the division, a drivers' school licensed by the director pursuant to section 2 of P.L.1951, c.216 (C.39:12-2) or any Statewide safety organization approved by the director. The course shall be subject to oversight by the division according to its guidelines. The permit holder shall also remit a course fee prior to the commencement of the course. The director also shall postpone without the exercise of discretion or a hearing the issuance of a basic license for 90 days if the director is notified by a court of competent jurisdiction that the examination permit holder, after completion of the remedial training course, has been convicted of any motor vehicle violation which results in the imposition of any motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.182 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5, subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the director deems significant and applicable pursuant to regulation. When the director is notified by a court of compe-

tent jurisdiction that an examination permit holder has been convicted of any alcohol or drug-related offense unrelated to the operation of a motor vehicle and is not otherwise subject to any other suspension penalty therefor, the director shall, without the exercise of discretion or a hearing, suspend the examination permit for six months.

An examination permit for a motorcycle or a commercial motor vehicle issued to a handicapped person, as determined by the Division of Motor Vehicles after consultation with the Department of Education, shall be valid for nine months or until the completion of the road test portion of his license examination, whichever period is shorter.

Each permit shall be sufficient license for the person to operate such designated class of motor vehicles in this State during the period specified, while in the company of and under the control of a driver licensed by this State to operate such designated class of motor vehicles, or, in the case of a commercial driver license permit, while in the company of and under the control of a holder of a valid commercial driver license for the appropriate license class and with the appropriate endorsements issued by this or any other state. Such person, as well as the licensed driver, except for a motor vehicle examiner administering a driving skills test, shall be held accountable for all violations of this subtitle committed by such person while in the presence of the licensed driver. In addition to requiring an applicant for an examination permit to submit satisfactory proof of identity and age, the director also shall require the applicant to provide, as a condition for obtaining the permit, satisfactory proof that the applicant's presence in the United States is authorized under federal law. If the director has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the director shall refuse to grant the permit until such time as the document may be verified by the issuing agency to the director's satisfaction.

The holder of an examination permit shall be required to take a road test in order to obtain a provisional license. No road test for any person who has been issued an examination permit to operate a passenger vehicle shall be given unless the person has met the requirements of this section. No road test for a provisional license shall be given unless the applicant has first secured an examination permit and no such road test shall be scheduled for an applicant who has secured an examination permit for a passenger vehicle or a motorcycle for which an endorsement is not required until at least six months for an applicant under 21 years of age or three months for an applicant 21 years of age or older shall have elapsed following the validation of the examination permit for practice driving or, in the case of an examination permit for other vehicles, until 20 days have elapsed. In the case of an omnibus endorsement or school bus, no road test shall be

scheduled until at least 10 days shall have elapsed. Every applicant for an examination permit to qualify for an omnibus endorsement or an articulated vehicle endorsement shall be a holder of a valid basic driver's license.

The required fees for special learners' permits and examination permits shall be as follows:

Basic driver's license	up to \$10
Motorcycle license or endorsement	\$ 5
Omnibus or school bus endorsement	\$25
Articulated vehicle endorsement	\$15

The director shall waive the payment of fees for issuance of examination permits for omnibus endorsements whenever the applicant establishes to the director's satisfaction that said applicant will use the omnibus endorsement exclusively for operating omnibuses owned by a nonprofit organization duly incorporated under Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes.

The specified period for which a permit is issued may be extended for not more than an additional 60 days, without payment of added fee, upon application made by the holder thereof, where the holder has applied to take the examination for a driver's license prior to the expiration of the original period for which the permit was issued and the director was unable to schedule an examination during said period.

7. Section 6 of P.L.1977, c.25 (C.39:3-13.2a) is amended to read as follows:

C.39:3-13.2a Special learner's permit; use, hours.

6. a. Any person to whom a special learner's permit has been issued pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1), upon successful completion of a State approved written examination, eye examination and an approved minimum six-hour behind-the-wheel driving course, shall be entitled to retain the special learner's permit in his own possession. The special learner's permit shall be validated by the division for the purpose of driving a motor vehicle on a public highway in this State after the holder has successfully met the necessary examination requirements, and upon the successful completion of a behind-the-wheel driving course. Such person may operate a motor vehicle of the class for which a basic driver's license is required except during the hours between 11:01 p.m. and 5:00 a.m. while in the company and under the supervision, from the front passenger seat, of a licensed motor vehicle driver of this State who is over 21 years of age and has been licensed to drive a passenger automobile for at least three years. Such special permit shall be valid until such person's seventeenth birthday

or until he qualifies for a provisional license. Except during an instructional period of a behind-the-wheel driving course, the holder of a special permit shall operate a passenger automobile with only the following passengers: (1) the supervising passenger; (2) persons who share the permit holder's residence; and (3) one additional passenger who does not reside with the permit holder. The holder of the special learner's permit shall not use any interactive wireless communication device, except in an emergency, while operating a moving passenger automobile on a public road or highway. "Use" shall include, but not be limited to, talking or listening on any interactive wireless communication device or operating its keys, buttons or other controls. All occupants of the automobile shall be secured in a properly adjusted and fastened seat belt or child restraint system.

b. When notified by a court of competent jurisdiction that a special learner's permit holder has been convicted of a violation which causes the permit holder to accumulate more than two motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the director determines to be significant and applicable pursuant to regulation, and in addition to any other penalty that may be imposed, the director shall, without the exercise of discretion or a hearing, suspend the holder's special learner's permit for 90 days. The director shall restore the permit following the term of the permit suspension if the permit holder, regardless of age, satisfactorily completes a remedial training course of not less than four hours which may be given by the division, a drivers' school licensed by the director pursuant to section 2 of P.L.1951, c.216 (C.39:12-2) or any Statewide safety organization approved by the director. The course shall be administered pursuant to rules and regulations promulgated by the director and subject to oversight by the division. The authority of the director to suspend, revoke or deny issuance of an initial or renewal license to operate a drivers' school or an instructor's license, and to assess fines, pursuant to P.L.1951, c.216 (C.39:12-1 et seq.) shall apply to any violations related to the administration of a remedial training course. The permit holder shall also remit a course fee prior to the commencement of the course. If, after completion of the remedial training course, the director is notified by a court of competent jurisdiction that the special learner's permit holder has been convicted of any motor vehicle violation which results in the imposition of any motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the director deems significant and applicable pursuant to regulation, the director, without the exercise of

discretion or a hearing, shall also postpone the issuance of a basic license for 90 days. When the director is notified by a court of competent jurisdiction that a special learner's permit holder has been convicted of any alcohol or drug-related offense unrelated to the operation of a motor vehicle and he is not otherwise subject to any other suspension penalty therefor, the director shall, without the exercise of discretion or a hearing, suspend the special learner's permit for six months.

8. Section 4 of P.L.1950, c.127 (C.39:3-13.4) is amended to read as follows:

C.39:3-13.4 Provisional driver's license.

4. The holder of a special learner's permit shall be entitled to a provisional driver's license (1) upon attaining the age of 17 years, (2) upon the satisfactory completion of an approved behind-the-wheel automobile driving education course as indicated upon the face of the special permit over the signature of the principal of the school or the person operating the drivers' school in which the course was conducted, (3) upon the completion of six months' driving experience with a validated special learner's permit in compliance with the provisions of section 6 of P.L.1977, c.25 (C.39:3-13.2a) and (4) upon passing the road test pursuant to R.S.39:3-10.

The holder of a provisional license shall be permitted to operate the passenger automobile with only one additional passenger in the vehicle besides persons with whom the holder resides, except that this passenger restriction shall not apply when either the holder of the provisional license or one other passenger is at least 21 years of age. Further, the holder of the provisional license who is under 21 years of age shall not drive during the hours between 12:01 a.m. and 5 a.m.; provided however, that this condition may be waived for an emergency which, in the judgment of local police, is of sufficient severity and magnitude to substantially endanger the health, safety, welfare or property of a person or for any bona fide employment or religion-related activity if the employer or appropriate religious authority provides written verification of such activity in a manner provided for by the director. The holder of the provisional license shall not use any interactive wireless communication device, except in an emergency, while operating a moving passenger automobile on a public road or highway. "Use" shall include, but not be limited to, talking or listening on any interactive wireless communication device or operating its keys, buttons or other controls. In addition, the holder of the provisional license shall ensure that all occupants of the vehicle are secured in a properly adjusted and fastened seat belt or child restraint system. In addition to any other penalties provided under law, the holder of a provisional license who accumulates more than two motor vehicle

points or is convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1 or any other motor vehicle law the director deems to be significant and applicable pursuant to regulation shall, for the first violation, be required to satisfactorily complete a remedial training course of not less than four hours which may be given by the division, a drivers' school licensed by the director pursuant to section 2 of P.L.1951, c.216 (C.39:12-2) or any Statewide safety organization approved by the director. The course shall be administered pursuant to rules and regulations promulgated by the director and subject to oversight by the division. The authority of the director to suspend, revoke or deny issuance of an initial or renewal license to operate a drivers' school or an instructor's license, and to assess fines, pursuant to P.L.1951, c.216 (C.39:12-1 et seq.) shall apply to any violations related to the administration of a remedial training course. The permit holder shall also remit a course fee prior to the commencement of the course. When notified by a court of competent jurisdiction that a provisional license holder has been convicted of a second or subsequent violation, in addition to any other penalties provided under law, the director shall, without the exercise of discretion or a hearing, suspend the provisional license for three months and shall postpone eligibility for a basic license for an equivalent period. In addition, when the director is notified by a court of competent jurisdiction that a provisional license holder has been convicted of any alcohol or drug-related offense unrelated to the operation of a motor vehicle, and he is not otherwise subject to any other suspension penalty therefor, the director shall, without the exercise of discretion or a hearing, suspend the provisional license for six months.

A provisional license may be sent by mail and shall be clearly identifiable and distinguishable in appearance from a basic license by any name, mark, color or device deemed appropriate by the director.

9. Section 2 of P.L.1951, c.216 (C.39:12-2) is amended to read as follows:

C.39:12-2 License required to conduct drivers' school; application; fees.

2. No person shall engage in the business of conducting a drivers' school without being licensed therefor by the Director of Motor Vehicles. Application therefor shall be in writing and contain such information therein as he shall require on initial and renewal applications, including the applicant's Federal Tax Identification number, State tax identification number and proof of workers' compensation insurance coverage by a mutual association or stock company authorized to write coverage on such risks in this State or written authorization by the Commissioner of Banking and

Insurance to self-insure for workers' compensation pursuant to R.S.34:15-77. The applicant shall file a surety bond in the amount of \$10,000 issued by a company authorized to transact surety business in this State and payable to the division. A license shall not be issued or renewed unless the applicant or an employee is a qualified supervising instructor. For purposes of this section, a "qualified supervising instructor" shall mean a drivers' school instructor who a. is currently licensed and has been licensed by the division for at least two years prior to submission of the initial or renewal application, b. has successfully provided a minimum of 500 hours of behind-the-wheel instruction, and c. has successfully completed a three credit New Jersey driver education college course offered by a college or university licensed by the New Jersey Commission on Higher Education. The applicant shall furnish, together with the application, satisfactory evidence that the applicant or an employee is a qualified supervising instructor as set forth herein, except that an applicant for license renewal shall have one year after the date this act becomes effective to furnish evidence of completion of a three credit New Jersey driver education college course to the division. If the application is approved, the applicant shall be granted a license to teach approved courses in classroom and behind-the-wheel driver education upon the payment of a fee of \$250.00; provided, however, no license fee shall be charged for the issuance of a license to any board of education, school board, public, private or parochial school, which conducts a course in driver education, approved by the State Department of Education. A license so issued shall be valid during the calendar year. The annual fee for renewal shall be \$200. The director shall issue a license certificate or license certificates to each licensee, one of which shall be displayed in each place of business of the licensee.

A public, parochial or private school or a drivers' school licensed by the director pursuant to this section shall be authorized to provide behind-the-wheel driving instruction.

Upon further application to the director, a drivers' school licensed by the director pursuant to this section may be approved by the director to conduct a State approved written drivers' examination, eye examination, or remedial training course, subject to a fee and annual renewal thereof in an amount which shall be determined by the director. The examinations and training course shall be administered pursuant to rules and regulations promulgated by the director and subject to oversight by the division. The authority of the director to suspend, revoke or deny issuance of an initial or renewal license to operate a drivers' school or an instructor's license, and to assess fines, pursuant to this chapter, shall apply to any violations related to the administration of a State approved written drivers' examination, eye examination or remedial training course.

In case of the loss, mutilation or destruction of a certificate, the director shall issue a duplicate upon proof of the facts and the payment of a fee of \$5.

C.39:12-4.1 Inspection of premises of licensee; violations, fines.

10. The director shall make or cause to be made a full and complete inspection, at least annually, of the premises of each licensee at reasonable hours as the director may deem necessary to be assured that the licensee and the premises comply at all times with the provisions of this title governing drivers' schools, as well as the rules and regulations and the minimum standards established thereunder. A violation of such rules, regulations and standards sufficient to be considered more than de minimis shall result in a fine for the first violation of no less than \$500 or more than \$1,500; for a second violation, a fine of no less than \$1,500 or more than \$2,500; and for a third or subsequent violation, the suspension or revocation by the director of the license of any drivers' school.

C.39:3-13.8 Fine for violations of special learners permit conditions.

11. A fine of \$100 shall be imposed for violating the following conditions of a special learners permit, an examination permit or a provisional driver's license:

- a. supervision requirements for permit holders;
- b. passenger restrictions;
- c. hours of operation;
- d. seat belt requirements;
- e. interactive wireless communication device use restrictions; or
- f. any other violation of the conditions of a permit or provisional license as the director may designate.

C.39:2-9.8 Construction of act concerning graduated driver licensing and driving schools.

12. The provisions of this act are not intended, nor shall they be construed or used, as a basis to privatize existing services or programs, or in any manner reduce the number of State employees performing driver testing duties in the Division of Motor Vehicles.

13. This act shall take effect immediately and shall apply to any applicant for an initial special learner's permit or examination permit on or after the effective date of this act.

Approved January 8, 2002.

CHAPTER 421

AN ACT authorizing the Comprehensive Enforcement Program to collect unpaid municipal court fines and amending P.L.1995, c.9.

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

1. Section 2 of P.L.1995, c.9 (C.2B:19-2) is amended to read as follows:

C.2B:19-2 Findings, declarations.

2. The Legislature finds and declares that:
 - a. The Judiciary routinely enters judgments and court orders setting forth assessments, surcharges, fines and restitution against litigants pursuant to statutory law.
 - b. The enforcement of court orders is crucial to ensure respect for the rule of law and credibility of the court process.
 - c. Despite monitoring of judgments and court orders by probation divisions and other segments of the Judiciary responsible for doing so, many orders are not complied with because there is a lack of central coordination, funding, automation, and control.
 - d. The Judiciary has successfully developed a hearing officer program in child support enforcement and a pilot criminal enforcement court project, which is in the process of being expanded, that have demonstrated significant increases in collections and compliance.
 - e. The Governor's Management Review Commission has reviewed the collections process in New Jersey and made recommendations supporting the establishment and funding of a Statewide comprehensive enforcement program operated by the Judiciary.
 - f. Upon passage of this act, the Supreme Court and the Chief Justice will establish a Statewide comprehensive enforcement program which will provide for the enforcement of court orders and oversee collection of court-ordered fines, assessments, surcharges and judgments in the civil, criminal and family divisions, the Tax Court and in municipal court as provided in section 6 of P.L.1995, c.9 (C.2B:19-6). The comprehensive enforcement program will provide for the collection of certain surcharges administratively imposed by the Division of Motor Vehicles as provided in section 6 of P.L.1995, c.9 (C.2B:19-6). The comprehensive enforcement program will utilize the child support hearing officer model and the pilot project criminal enforcement court model, supported by a Statewide

automation system designed to increase collections, compliance and accountability.

2. Section 6 of P.L.1995, c.9 (C.2B:19-6) is amended to read as follows:

C.2B:19-6 Unresolved money collection matters; DMV surcharges; public defender liens.

6. a. All matters involving the collection of moneys in the Superior Court and Tax Court which have not been resolved in accordance with an order of the court may be transferred, pursuant to court rule, to the comprehensive enforcement program for such action as may be appropriate.

b. (1) A municipal court may request that all matters which have not been resolved in accordance with an order of that court be transferred to the comprehensive enforcement program in accordance with the provisions of section 9 of P.L.1995, c.9 (C.2B:19-9) for such action as may be appropriate. All moneys collected through the comprehensive enforcement program which result from the enforcing of orders transferred from any municipal court shall be subject to the 25% deduction authorized pursuant to section 4 of this act except for moneys collected in connection with the enforcement of orders related to parking violations.

(2) Nothing contained in this act shall prevent any municipal court from contracting the services of a private collection agency to collect any moneys which have not been remitted in accordance with an order of that court.

c. The Director of the Division of Motor Vehicles may refer matters of surcharges imposed administratively under the New Jersey Merit Rating Plan in accordance with the provisions of section 6 of P.L.1983, c.65 (C.17:29A-35) which have not been satisfied to the comprehensive enforcement program in accordance with the procedures established pursuant to section 4 of P.L.1997, c.280 (C.2B:19-10) to be reduced to judgment and for such additional action as may be appropriate. All moneys collected through the comprehensive enforcement program which result from the collection of these surcharge moneys shall be subject to the 25% deduction authorized pursuant to section 4 of P.L.1995, c.9 (C.2B:19-4).

d. (1) At the request of the Public Defender, the Clerk of the Superior Court shall refer every unsatisfied lien, filed by the Public Defender, to the comprehensive enforcement program for collection. All moneys collected through the comprehensive enforcement program which result from the collection of these liens shall be subject to the deduction authorized pursuant to section 4 of P.L.1995, c.9 (C.2B:19-4).

(2) Upon satisfaction of a public defender lien through the comprehensive enforcement program, the comprehensive enforcement program shall notify the Clerk of the Superior Court within 10 days of satisfaction and the

satisfaction of the lien shall be entered in the Superior Court Judgment Index.

3. Section 9 of P.L.1995, c.9 (C.2B:19-9) is amended to read as follows:

C.2B:19-9 Recommendation of hearing officer; approval.

9. Any recommendation by a comprehensive enforcement hearing officer shall be in conformity with court rules and shall be approved by:

a. a judge of the Superior Court for Superior Court matters and for any municipal court matters in which a final judgment has been docketed in the Superior Court; or

b. a judge of the municipal court, designated by the Assignment Judge of the vicinage, for municipal court matters in which a final judgment has not been docketed with the Superior Court.

4. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 422

AN ACT authorizing the Township of South Hackensack in the County of Bergen to make permanent the appointment of Robert Chinchar to the Township Police Department and authorizing his enrollment in PFRS.

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

1. Pursuant to the provisions of P.L.1948, c.199 (C.1:6-10 et seq.), under which a petition for a special law has been filed with the Legislature, the Township of South Hackensack in the County of Bergen is authorized to make permanent the appointment of Robert Chinchar to the Township of South Hackensack Police Department notwithstanding that his age is greater than the maximum age for appointment thereto set forth in N.J.S.40A:14-127.

2. The Board of Trustees of the Police and Fireman's Retirement System of New Jersey shall accept as a member of the retirement system any person otherwise eligible for membership, appointed pursuant to this act; provided there is paid into the retirement system, in a manner which the

board shall prescribe, the contribution deemed due and payable from the date of original appointment.

3. This act shall take effect upon due adoption of an ordinance of the Township of South Hackensack for the purpose of adopting same.

Approved January 8, 2002.

CHAPTER 423

AN ACT authorizing the Borough of Cliffside Park in the County of Bergen to appoint Pasqual DeRito to the Borough Police Department and authorizing his enrollment in PFRS.

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

1. Pursuant to the provisions of P.L.1948, c.199 (C.1:6-10 et seq.), under which a petition for a special law has been filed with the Legislature, the Borough of Cliffside Park in the county of Bergen is authorized to appoint Pasqual DeRito to the Borough of Cliffside Park Police Department notwithstanding that his age is greater than the maximum age for appointment thereto set forth in N.J.S.40A:14-127.

2. The Board of Trustees of the Police and Fireman's Retirement System of New Jersey shall accept as a member of the retirement system any person otherwise eligible for membership, appointed pursuant to this act; provided there is paid into the retirement system, in a manner which the board shall prescribe, the contribution deemed due and payable from the date of original appointment as a special law enforcement officer.

3. This act shall take effect upon due adoption of an ordinance of the Borough of Cliffside Park for the purpose of adopting same.

Approved January 8, 2002.

CHAPTER 424

AN ACT concerning hazardous substances, and amending P.L.1976, c.141.

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

1. Section 9 of P.L.1976, c.141 (C.58:10-23.11h) is amended to read as follows:

C.58:10-23.11h Imposition of tax; measurement; amount; return; filing; failure to file; penalty; presumptive evidence; powers of director.

9. a. There is hereby levied upon each owner or operator of one or more major facilities a tax to insure compensation for cleanup costs and damages associated with any discharge of hazardous substances to be paid by the transferee; provided, however, that in the case of a major facility which operates as a public storage terminal for hazardous substances owned by others, the owner of the hazardous substance transferred to such major facility or his authorized agent shall be considered to be the transferee or transferor, as the case may be, for the purposes of this section and shall be deemed to be a taxpayer for purposes of this act. Where such person has failed to file a return or pay the tax imposed by this act within 60 days after the due date thereof, the director shall forthwith take appropriate steps to collect same from the owner of the hazardous substance. In the event the director is not successful in collecting said tax, then on notice to the owner or operator of the public storage terminal of said fact said owner or operator shall not release any hazardous substance owned by the taxpayer. The director may forthwith proceed to satisfy any tax liability of the taxpayer by seizing, selling or otherwise disposing of said hazardous substance to satisfy the taxpayer's tax liability and to take any further steps permitted by law for its collection. For the purposes of this act, public storage terminal shall mean a public or privately owned major facility operated for public use which is used for the storage or transfer of hazardous substances. The tax shall be measured by the number of barrels or the fair market value, as the case may be, of hazardous substances transferred to the major facility; provided, however, that the same barrel, including any products derived therefrom, subject to multiple transfers from or between major facilities shall be taxed only once at the point of the first transfer.

When a hazardous substance other than petroleum which has not been previously taxed is transferred from a major in-State facility to a facility which is not a major facility, the transferor shall be liable for tax payment for said transfer.

b. (1) (a) The tax shall be \$0.0150 per barrel transferred and in the case of the transfer of hazardous substances other than petroleum or petroleum products, the tax shall be the greater of \$0.0150 per barrel or 1.0% of the fair market value of the product plus \$0.0025 per barrel; provided, however, that

with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, which are transferred into this State subsequent to being recycled, refined or rerefined, or which are or contain elemental phosphorus, or which are elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants, the tax shall be \$0.0150 per barrel of the hazardous substance; and provided further, however, that the total aggregate tax due for any individual taxpayer facility which has paid the tax in the 1986 tax year shall not exceed 125% of the tax due and payable by that taxpayer facility during the 1986 tax year plus an additional \$0.0025 per barrel; except that for a hazardous substance which is directly converted to, and comprises more than 90% by weight of, a non-hazardous final product, the taxpayer facility shall pay no more than 100% of the tax due and payable in the 1986 tax year plus an additional \$0.0025 per barrel. For major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100% of the tax paid in 1999. For the purposes of applying the 125% of tax due limitation, a successor in interest pursuant to a sale or a reorganization, as defined pursuant to the Internal Revenue Code of 1986, on or before June 1, 2001 shall be entitled to the predecessor taxpayer's limitation. In computing 125% of the tax due and payable by the taxpayer during the 1986 tax year, for taxes due after January 1, 1996 from an owner or operator including the successor in interest pursuant to a sale or a reorganization as defined in this paragraph of one or more major facilities who has continuously since 1986 filed a combined tax return for more than one major facility but who prior to January 1, 1996 has entirely closed and decommissioned one or more of those major facilities, a taxpayer shall include 1986 taxes arising from major facilities which (1) caused the taxpayer to incur a tax liability in 1986, and (2) continue to cause the taxpayer to incur a tax liability during the current tax year. For transfers which are or contain elemental phosphorus, or which are elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants, in computing the 125% of the taxes due and payable by the taxpayer during the 1986 tax year, a taxpayer, which shall include any subsequent owner or operator of a major facility which transfers elemental phosphorus, shall calculate the tax at \$0.015 per barrel. For the purposes of this section, "precious metals" means gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium and copper. In the event of a major discharge or series of discharges of petroleum or petroleum products resulting in reasonable claims against the fund exceeding the existing balance of the fund, the tax shall be levied at the rate of \$0.04 per

barrel of petroleum or petroleum products transferred, until the revenue produced by such increased rate equals 150% of the total dollar amount of all pending reasonable claims resulting from the discharge of petroleum or petroleum products; provided, however, that such rate may be set at less than \$0.04 per barrel transferred if the administrator determines that the revenue produced by such lower rate will be sufficient to pay outstanding reasonable claims against the fund within one year of such levy. For the purposes of determining the existing balance of the fund, the administrator shall not include any amount in the fund collected from the \$0.0025 per barrel increase in the tax imposed pursuant to P.L.1990, c.78 and dedicated for hazardous substance discharge prevention in accordance with paragraph (2) of this subsection.

(b) Notwithstanding any provision of subparagraph (a) of this paragraph to the contrary, in order to qualify for the reduced tax rate for elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants authorized in that subparagraph, the taxpayer shall demonstrate, by December 31 of each year, to the satisfaction of the Department of the Treasury, acting in cooperation with the Department of Environmental Protection, all of the following: (i) that the taxpayer's sales of the hazardous substance constitute, in the calendar year immediately prior to the first calendar year in which the reduced tax rate shall apply, at least 75% of the taxpayer's total annual income in that immediately prior calendar year; (ii) that no other competitor of the taxpayer located in another state is subject to a tax in that other state, with respect to the hazardous substance, that is substantially similar to the tax imposed thereon pursuant to this section; (iii) that the taxpayer otherwise would suffer economic stress unless the benefit from the reduced tax rate is allowed; (iv) that the taxpayer has never filed a successful claim against the New Jersey Spill Compensation Fund; (v) that the taxpayer has never discharged a hazardous substance that required cleanup and removal in accordance with P.L.1976, c.141 (C.58:10-23.11 et seq.); and (vi) that, upon request of the State Treasurer, the taxpayer's accountant or counsel can provide a certified document detailing, with respect to the hazardous substance, the amount of tax that would have been paid each calendar year by the taxpayer had the reduced tax rate not been in effect and the amount that was actually paid each calendar year under the reduced tax rate, so that the State Treasurer may calculate the loss of tax revenue, if any, to the State attributable to the reduced tax rate. If the taxpayer fails to qualify under the provisions of this subparagraph for the reduced tax rate, the taxpayer shall pay, for that calendar year, the tax at the full rate imposed pursuant to subparagraph (a) of this paragraph.

(c) Interest received on moneys in the fund shall be credited to the fund.

(2) An amount of \$0.0025 per barrel collected from the proceeds of the tax imposed pursuant to this subsection shall be deposited into the New Jersey Spill Compensation Fund and dedicated for the purposes of P.L.1990, c.78 and for other authorized purposes designed to prevent the discharge of a hazardous substance.

c. (1) Every taxpayer and owner or operator of a public storage terminal for hazardous substances shall on or before the 20th day of the month following the close of each tax period render a return under oath to the director on such forms as may be prescribed by the director indicating the number of barrels of hazardous substances transferred and where appropriate, the fair market value of the hazardous substances transferred to or from the major facility, and at said time the taxpayer shall pay the full amount of the tax due.

(2) Every taxpayer or owner or operator of a major facility or vessel which transfers a hazardous substance, as defined in this act, and who is subject to the tax under subsection a. shall within 20 days after the first such transfer in any fiscal year register with the director on such form as shall be prescribed by him.

(3) Those hazardous substances determined by the Department of Environmental Protection not to be subject to regulation pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1990, c.78 shall not be subject to taxation pursuant to this section.

d. If a return required by this act is not filed, or if a return when filed is incorrect or insufficient in the opinion of the director, the amount of tax due shall be determined by the director from such information as may be available. Notice of such determination shall be given to the taxpayer liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after receiving notice of such determination, shall apply to the director for a hearing, or unless the director on his own motion shall redetermine the same. After such hearing the director shall give notice of his determination to the person to whom the tax is assessed.

e. Any taxpayer who shall fail to file his return when due or to pay any tax when the same becomes due, as herein provided, shall be subject to such penalties and interest as provided in the "State Tax Uniform Procedure Law," R.S.54:48-1 et seq. If the Division of Taxation determines that the failure to comply with any provision of this section was excusable under the circumstances, it may remit such part or all of the penalty as shall be appropriate under such circumstances.

f. (1) (Deleted by amendment, P.L.1987, c.76.)

(2) (Deleted by amendment, P.L.1987, c.76.)

g. In addition to the other powers granted to the director in this section, he is hereby authorized and empowered:

(1) To delegate to any officer or employee of his division such of his powers and duties as he may deem necessary to carry out efficiently the provisions of this section, and the person or persons to whom such power has been delegated shall possess and may exercise all of said powers and perform all of the duties delegated by the director;

(2) To prescribe and distribute all necessary forms for the implementation of this section.

h. The tax imposed by this act shall be governed in all respects by the provisions of the "State Tax Uniform Procedure Law," R.S.54:48-1 et seq., except only to the extent that a specific provision of this act may be in conflict therewith.

i. (Deleted by amendment, P.L.1986, c.143.)

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

Approved January 8, 2002.

CHAPTER 425

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, 2002 and regulating the disbursement thereof," approved June 29, 2001(P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sums for the purposes specified:

22 DEPARTMENT OF COMMUNITY AFFAIRS
40 Community Development and Environmental Management
41 Community Development Management
GRANTS-IN-AID

04-8030 Local Government Services	<u>\$3,320,000</u>
Total Grants-In-Aid Appropriation,	
Community Development Management	<u>\$3,320,000</u>

Grants-In-Aid:

04 Bound Brook Borough	
Additional Flood Aid	(\$2,000,000)
04 Manville Borough Additional	
Flood Aid	(\$1,320,000)

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 426

AN ACT appropriating \$8,498,674 from the "Urban and Rural Centers Unsafe Buildings Demolition Revolving Loan Fund," established pursuant to section 14 of the "Urban and Rural Centers Unsafe Buildings Demolition Bond Act," P.L.1997, c.125, for loans for demolition and renewal projects in various municipalities.

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

1. There is appropriated to the Department of Community Affairs from the "Urban and Rural Centers Unsafe Buildings Demolition Revolving Loan Fund," established pursuant to section 14 of the "Urban and Rural Centers Unsafe Buildings Demolition Bond Act," P.L.1997, c.125, the amount of \$8,498,674, to be used for loans for building demolition and disposal projects in the following municipalities in the amounts set forth:

Asbury Park	\$ 130,000
Bayonne	\$ 421,454
Bridgeton	\$ 304,000
Camden City	\$ 1,622,000
Carteret	\$ 450,000
Hillside	\$ 100,000
Irvington	\$ 825,000
Keansburg	\$ 65,000
Long Branch	\$ 578,600
Newark	\$ 1,056,762
Orange	\$ 300,000
Paterson	\$ 450,000
Trenton	\$ 2,195,858

2. The loans authorized by section 1 of this act shall be for a term not to exceed 20 years, at an interest rate not to exceed four percent per annum and upon such terms and conditions as determined by the Commissioner of Community Affairs and approved by the State Treasurer. Loan repayments shall be deposited to the "Urban and Rural Centers Unsafe Buildings Demolition Revolving Loan Fund."

3. All appropriated funds that are not expended within the time period allowed under rules adopted by the Commissioner of Community Affairs shall be returned to the "Urban and Rural Centers Unsafe Buildings Demolition Revolving Loan Fund."

4. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 427

AN ACT concerning higher education tuition assistance for members of the New Jersey National Guard and amending P.L.1999, c.46.

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

1. Section 21 of P.L.1999, c.46 (C.18A:62-24) is amended to read as follows:

C.18A:62-24 Tuition benefits for members of New Jersey National Guard; State payment.

21. a. Any member of the New Jersey National Guard shall be permitted to attend regularly-scheduled courses at any public institution of higher education in this State enumerated in N.J.S.18A:62-1 and receive up to 15 credits per semester tuition-free provided that:

(1) the member has completed Initial Active Duty Training and is in good standing as an active member of the New Jersey National Guard;

(2) the member has been accepted to pursue a course of undergraduate study and is enrolled as an undergraduate student in good standing at that institution or a course of graduate study and is enrolled as a graduate student in good standing at that institution; and

(3) the member has applied for all available State student grants and scholarships and all available federal student grants and scholarships for which the member is eligible.

b. The State shall reimburse a public institution of higher education for the tuition cost of each National Guard member who enrolls in the institution pursuant to the provisions of this section.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 428

AN ACT appropriating \$3,500,000 from the "1996 Economic Development Site Fund," established pursuant to section 20 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, for an economic development grant, and cancels a previous appropriation of the same amount from the fund.

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

1. There is appropriated to the "New Jersey Commerce and Economic Growth Commission" established pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63), from the "1996 Economic Development Site Fund," established pursuant to section 20 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, the sum of \$3,500,000 for a grant to the Nutraceuticals Institute, a unit of Rutgers, the State University, to establish a science-based economic development program in southern New Jersey with headquarters in Camden City, Camden County.

2. The amount of \$3,500,000 previously appropriated to the "New Jersey Commerce and Economic Growth Commission" established pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63), from the "1996 Economic Development Site Fund," established pursuant to section 20 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, for the purposes set forth in subsection d. of section 1 of P.L.1999, c.99 is canceled.

3. The expenditure of the funds appropriated by this act is subject to the provisions and conditions of P.L.1996, c.70, and to any regulations adopted pursuant thereto.

4. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 429

AN ACT concerning maritime transportation, establishing the Office of Maritime Resources within the Department of Transportation, amending P.L.1997, c.97, and supplementing Title 27 of the Revised Statutes.

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

C.27:1A-75 Short title.

1. Sections 1 through 11 of this act shall be known and may be cited as the "New Jersey Marine Transportation System Act."

C.27:1A-76 Findings, declarations relative to maritime transportation.

2. The Legislature finds and declares that:

a. There should be a single State agency for New Jersey's maritime industry charged with advancing Statewide maritime development initiatives and technologies, planning for maritime systems, enhancing New Jersey's marine environment, fostering maritime education, and providing overall support functions to the maritime industry in close coordination with the Department of Environmental Protection, the New Jersey Commerce and Economic Growth Commission, and other State agencies.

b. New Jersey's maritime industry is a \$50 billion industry supporting more than 300,000 New Jersey citizens. The industry is located along 127 miles of New Jersey shoreline, on 116 State navigation channels, 240 miles of navigable waterways in New York Harbor, and along 106 miles of the Delaware River and Bay. Throughout the State, warehousing, manufacturing and cargo handling facilities service the commerce taking place along these water highways, and the intermodal connections which service them support local, national and international port commerce. The industry includes boat-building companies, members of the marine trades' associations, marinas, the commercial and recreational fishing industry, science, technology, and educational and related services. It also includes those

industries that support waterborne military operations and national security initiatives.

c. The infrastructure required to support New Jersey's commercial and recreational maritime industry is collectively designated as New Jersey's Marine Transportation System. It is a comprehensive system which includes navigable channels, waterborne commerce, dredging and dredged material management technologies, berth, terminal and related structures, intermodal transportation facilities and corridors, shipping, receiving and cargo-movement tracking systems, global positioning systems, vessel traffic and port information systems, physical oceanographic real-time systems, and geographical information systems. Navigation aides, boat building technologies, ocean habitat tracking systems and other new technologies interact to create a seamless system linking all aspects of the maritime industry into a single transportation matrix. The Marine Transportation System provides economic value, State and national security support, environmental protection and recreational opportunity for the State, the region and the nation.

d. Water transportation systems are a desirable, necessary and environmentally beneficial means of moving people and goods and such systems will promote the development and redevelopment of the State's urban centers. It is further declared that in a densely settled state such as New Jersey, it should be a priority of the Department of Transportation to promote the development of water transportation systems and to provide, as necessary for the public safety and welfare, for the coordination and facilitation of water transportation systems.

C.27:1A-77 Definitions relative to maritime transportation.

3. As used in this act:

"Commissioner" means the Commissioner of Transportation.

"Department" means the Department of Transportation.

"Dredging and dredging related projects" means the removal of sand, silt, mud, clay, rock, or other material from the bottom of a waterway in order to maintain or deepen navigation channels and berths, related infrastructure development of such a project, the management of the dredged material through decontamination, acceptable placement or beneficial use, and the potential funding of such projects as necessary to support New Jersey's maritime industry.

"Marine transportation system" means navigable channels, berths, terminals and related intermodal transportation infrastructure, facilities and equipment, sediment and dredged materials management programs, shipping, receiving, cargo-movement and tracking, aides to navigation, intelligent and vessel transportation systems, and such related activities

which promote the efficient operation, environmental integrity, and economic development of New Jersey's maritime industry.

"Maritime industry" means ports and terminals, ship services and boat building, education, science and technology, marine trades and support services, ferries, movement of cargo and waterborne commerce, commercial and recreational fishing, navigation and government support services, including waterborne military operations and national security initiatives, and the direct and indirect industries supporting the entire marine transportation system.

"Office" means the Office of Maritime Resources in the Department of Transportation.

C.27:1A-78 Office of Maritime Resources.

4. There is hereby established in the Department of Transportation the Office of Maritime Resources. The office shall serve as the lead on all maritime industry matters including, but not limited to, dredging, dredging technologies and dredging related issues, State and federal marine transportation systems, and port development. The office shall be the primary advisor to the Governor and the commissioner on all matters relating to the mission of the office. The office shall also serve as the point of contact for the maritime industry and shall coordinate maritime planning and policy issues with federal, State and local governments and regional and bi-state agencies, as appropriate.

C.27:1A-79 "New Jersey Marine Transportation System Development" section of transportation plan.

5. In support of the State's long range transportation plan, the office shall be responsible, in collaboration with the Division of Transportation Systems Planning in the department, for the preparation of a "New Jersey Marine Transportation System Development" section of the State's long range transportation plan which shall assess conditions, define future needs and propose recommendations that improve New Jersey's Marine Transportation System, in accordance with the findings and declarations contained in section 2 of this act. The section shall outline strategic initiatives on regional port planning, marine transportation system infrastructure, technology, and economic development related to the maritime infrastructure and capital investment strategies.

C.27:1A-80 Additional powers of commissioner.

6. In addition to any powers granted to the commissioner under this act or any other provision of law, the commissioner shall:

a. Provide interagency support, programmatic planning and policy recommendations, promote coordination and cooperation with and among

State, multi-state, bi-state, federal and non-governmental agencies in matters affecting the New Jersey Marine Transportation System;

- b. Engage in public education on maritime issues;
- c. Serve as the primary advisory body and lead agency for support of New Jersey's \$50 billion maritime industry;
- d. Participate in maritime-related technology research and development;
- e. Investigate innovative dredged material management technologies and techniques to ensure continued growth of New Jersey's Marine Transportation System;
- f. Act as the local sponsor for agreements with State and federal agencies in support of dredging and dredging related projects;
- g. Research, facilitate, and act as lead advisory body for grant funding opportunities which enhance and further the mission of the office;
- h. Develop and maintain an interactive educational website on the department's Internet website;
- i. Act as advisor for State and federal entities and non-governmental entities involved in advancing the mission of the New Jersey Marine Transportation System;
- j. Engage in waterborne, dredging, and related infrastructure development projects which enhance the economic, environmental, and efficient nature of maritime and marine trades services;
- k. Operate, lease, or license a dredging processing facility, or contract for the design, construction, use, management or operation of any State dredging processing facility; and
- l. Undertake any additional actions as appropriate to advance the State's maritime roles and responsibilities.

C.27:1A-81 Duties of commissioner.

7. The commissioner shall investigate and develop alternative funding resources, establish and budget annual State funding in furtherance of maritime initiatives, improve government coordination with the recreational and commercial fishing and boating industries, create regional dredged material disposal facilities, continue development of beneficial use options for dredged material, develop dredging and dredged material technologies, continue development of waterborne transportation targeting congestion relief from highways and reduced air pollution, and implement public education programs as desirable.

C.27:1A-82 Dredged material processing; "Maritime Industry Fund."

8. a. The commissioner, in consultation with the Department of Environmental Protection and the Department of the Treasury, may operate, lease, license or contract the design, construction, use, management or

operation of any State dredged material processing facility in such manner as to produce revenue in support of the maritime industry.

b. There is established in the General Fund a separate, non-lapsing, dedicated account to be known as the "Maritime Industry Fund," hereinafter referred to as "the fund." Notwithstanding any provisions of law to the contrary and except as otherwise provided in this act, the Maritime Industry Fund shall be utilized to provide for projects that support New Jersey's maritime industry.

c. Each fiscal year, the State Treasurer shall credit all revenues from any State dredged material processing facility to the fund.

d. Each fiscal year, the State Treasurer shall credit all earnings received from the investment or deposit of revenue in the fund, to the fund.

e. All revenues and earnings deposited in the fund shall be appropriated in the same fiscal year to the department exclusively in furtherance of the purposes set forth in this act.

C.27:1A-83 Purchases, contracts, agreements regulated.

9. Purchases, contracts, or agreements over \$25,000 for dredging and dredging related projects shall be governed as provided in subsections a. and b. below.

a. All purchases, contracts, or agreements, where the cost or contract price exceeds the sum of \$25,000, or, after January 1, 2003, the amount determined pursuant to subsection b. of this section, shall, except as otherwise provided by section 10 of this act, be made, negotiated, or awarded only after public advertisement for bids therefor and shall be awarded to that responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the office in its judgment, upon consideration of price and other factors. Any bid may be rejected when the office determines that it is in the public interest to do so.

Any purchase, contract, or agreement, where the cost or contract price is less than or equal to \$25,000, or the amount determined pursuant to subsection b. of this section, shall be made, negotiated, or awarded by the office without advertising and in any manner which the office, in its judgment, deems necessary to serve its unique interests and purposes and which promotes, whenever practicable, full and free competition by the acceptance of quotations or proposals or by the use of other suitable methods.

b. The department shall no later than March 1 of each odd-numbered year adjust the threshold amount set forth in subsection a. of this section, or subsequent to 2003 the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the consumer price index for all urban consumers in the New York City and the Philadel-

phia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of each odd-numbered year.

C.27:1A-84 Purchases, contracts, agreements may be made without public advertisement, certain circumstances.

10. Purchases, contracts or agreements over \$25,000 for dredging and dredging related projects may be made, negotiated, or awarded by the office without public advertisement as provided for in subsections a., b. and c. of this section.

a. Any purchase, contract, or agreement, where the cost or contract price exceeds the amount set forth in subsection a. of section 16 of P.L.1998, c.44 (C.52:27C-76), or, after January 1, 2003, the amount calculated by the Governor pursuant to subsection b. of section 16 of P.L.1998, c.44 (C.52:27C-76) may be made, negotiated, or awarded by the office without advertisement for bids under the following circumstances:

(1) When the subject matter consists of:

The purchase, rental, or lease of such office space, office machinery, specialized equipment, buildings or real property as may be necessary for the use, or incidental to the performance of the office's duties and the exercise of its powers under this act; or

(2) When any one or more of the following circumstances exist:

(a) Standardization of equipment and interchangeability of parts is in the public interest;

(b) Only one source of supply or service is available;

(c) The exigency of the office's duties and responsibilities will not admit of advertisement;

(d) More favorable terms can be obtained from a primary source of supply of an item or service;

(e) Bid prices, after advertising, are not reasonable or have not been independently arrived at in open competition, but no negotiated purchase, contract, or agreement may be entered into under this subsection after the rejection of all bids received unless: (i) notification of the intention to negotiate and reasonable opportunity to negotiate is given to each responsible bidder; (ii) the negotiated price is lower than the lowest rejected bid price of a responsible bidder; and (iii) the negotiated price is the lowest negotiated price offered by any responsible bidder;

(f) The purchase is to be made from, or the contract is to be made with, any federal or State government agency or other entity, or any political subdivision thereof; or

(g) Purchases are made through or by the Director of the Division of Purchase and Property, in the Department of the Treasury, pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1).

b. In any such instances as identified in subsection a. of this section, the office may make, negotiate, or award the purchase, contract or agreement in any manner which the office deems necessary to serve its unique interests and purposes and which promotes, whenever practicable, full and free competition by the acceptance of quotations or proposals or by the use of other suitable methods.

c. In any case in which the office shall make, negotiate, or award a purchase, contract, or agreement without public advertisement pursuant to subsection a. of this section, the office shall specify the subject matter or circumstances set forth in subsection a. which permit the office to take such action.

C.27:1A-85 Rules, regulations.

11. The commissioner is hereby authorized to make and issue such rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as the commissioner may deem necessary or appropriate to effectuate the purposes of this act.

12. Section 3 of P.L.1997, c.97 (C.12:6B-3) is amended to read as follows:

C.12:6B-3 Dredging Project Facilitation Task Force.

3. a. There is established in the Executive Branch of the State Government a Dredging Project Facilitation Task Force. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the task force is allocated within the Department of Transportation, but, notwithstanding that allocation, the task force shall be independent of any supervision or control by the department or by the commissioner or any officer or employee thereof. The task force shall constitute an instrumentality of the State exercising public and essential governmental functions, and the exercise by the task force of the powers conferred by this or any other act shall be deemed and held to be an essential governmental function of the State.

b. (1) The task force shall consist of 12 members, and shall include the following three ex-officio members: the Commissioner of the Department of Environmental Protection, or his designee; the Commissioner of the Department of Transportation, or his designee; and the State Treasurer, or his designee. The task force shall also include three public members appointed by the Governor; three public members appointed by the President of the Senate, one of whom the President of the Senate shall designate as chair of the task force; and three public members appointed by the Speaker of the General Assembly.

(2) The public members shall serve for terms of two years, except that of the public members first appointed by each appointing authority, one shall serve a term of three years, one shall serve a term of two years, and one shall serve a term of one year. Not more than two public members appointed by the same appointing authority shall be members of the same political party.

(3) The appointment of the members shall be made within 45 days of the effective date of this act. The appointee of the President of the Senate designated as chair of the task force shall serve a term of two years and shall convene an organizational meeting of the task force as soon as is practicable following the appointment of at least six public members to the task force.

(4) Each member of the task force shall serve for the term of the appointment and until a successor shall have been appointed and qualified. Task force members shall serve without compensation. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only. A public member may be reappointed to the task force upon term expiration.

(5) Any member of the task force may be removed by the appointing authority, for cause, after a public hearing.

(6) A majority of the full 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.

(7) The public members shall, to the maximum extent practicable, represent one or more of the following areas of expertise and specialization: the maritime industry, the business community, the trucking industry, organized labor, marine terminal operations, the tourism and recreation industry, environmental technology, and commercial fishing.

13. Section 4 of P.L.1997, c.97 (C.12:6B-4) is amended to read as follows:

C.12:6B-4 Priority list for dredging projects; appropriations.

4. a. It shall be the duty of the Office of Maritime Resources in the Department of Transportation to establish, from time to time, a project priority list for dredging, dredged material disposal projects and decontamination projects based primarily on the maintenance of the viability of the Port of New Jersey and New York as a deep water port accessible to international commerce, on the maintenance of the viability of navigation channels not located in the port region to promote commerce, recreation and tourism, and on the prospects for the creation and retention of jobs in New

Jersey. In developing a project priority list, the office shall consult with the task force and the Department of Environmental Protection, and shall review and consider the plan developed pursuant to subsection a. of section 5 of P.L.1997, c.97 (C.12:6B-5). The office, in consultation with the task force and the Department of Environmental Protection, shall identify in the project priority lists developed pursuant to this subsection, not less than a total of \$5 million for decontamination projects. Upon the development of a project priority list, the office shall submit the list to the task force for its approval. The task force is authorized to approve, disapprove, or approve in part, a project priority list.

b. Upon approval of a project priority list for projects authorized to receive funding pursuant to sections 5 and 7 of P.L.1996, c.70, or upon the failure of the task force to approve or disapprove a project priority list within 60 days of receipt of the list from the office, the task force shall submit the list to the President of the Senate and the Speaker of the General Assembly, who shall cause the project priority list to be introduced in each House in the form of legislative appropriations bills.

c. The Legislature shall consider, and may amend or supplement, the appropriations bills containing the project priority list. Any bill introduced pursuant to subsection b. of this section and approved by the Legislature shall appropriate monies from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of P.L.1996, c.70, only for the projects authorized pursuant to sections 5 and 7 of P.L.1996, c.70, and shall identify the specific projects, including the individual amounts therefor, for which monies are appropriated.

d. No monies appropriated pursuant to subsection c. of this section shall be expended for any project unless the expenditure is authorized pursuant to the project priority list contained in the legislation approved in accordance with the provisions of subsection c. of this section.

e. Nothing in this section shall preclude the Legislature from developing a project priority list and making appropriations therefor.

14. Section 5 of P.L.1997, c.97 (C.12:6B-5) is amended to read as follows:

C.12:6B-5 Dredging, dredged material, management and disposal plan.

5. a. The Office of Maritime Resources in the Department of Transportation shall, in consultation with the Department of Environmental Protection and the task force established pursuant to section 3 of P.L.1997, c.97 (C.12:6B-3), develop, implement and maintain a comprehensive dredging and dredged material management and disposal plan, including dredged material decontamination, for the navigable waters of the State.

b. The Department of Environmental Protection and the Department of Transportation shall be authorized, in accordance with the rules, regulations and procedures of the General Services Administration, to enter into agreements with public or private entities to establish ownership, lease provisions and other related real and personal property interests. The departments may also, in accordance with the rules, regulations and procedures of the General Services Administration, enter into agreements with regard to:

(1) the development, operation and management of dredging projects including, but not necessarily limited to, any cost sharing, right of way or easement provisions involved;

(2) the development, operation, management, closure and monitoring of dredged material disposal, treatment and processing facilities; and

(3) the development, evaluation, certification and implementation of demonstration dredged material decontamination and treatment technologies that are cost-effective, environmentally sound and that create a usable end product.

c. The departments shall be authorized to acquire by purchase, lease, grant or otherwise, any land, real or personal property which, in the determination of the departments, is reasonably necessary to effectuate the purposes of this act.

d. The departments shall be authorized to solicit proposals and to enter into all contracts and agreements necessary to plan, design, construct, equip, operate, finance, improve or maintain demonstration projects for dredging, dredged material disposal and dredged material decontamination projects.

e. The departments shall be authorized to charge and collect fees or charges for dredging and for the use of a dredged material disposal facility at such rates necessary to compensate for the costs to dredge, and to plan, design, construct, equip, operate, improve, maintain, close or replace the dredged material disposal facility and to ensure continued availability of dredging and dredged material disposal.

15. Section 10 of P.L.1997, c.97 (C.12:6B-6) is amended to read as follows:

C.12:6B-6 Criteria for final request for proposals.

10. The Department of Transportation and the Department of Environmental Protection shall establish, in consultation with the Dredging Project Facilitation Task Force, the criteria for the content of final requests for proposals for any studies, assessments, demonstration projects and dredging, and all phases in the development and construction of a dredged material disposal facility. The State may include in a request for proposals

developed pursuant to this act, on a case-by-case basis, a provision for the indemnification of the State by the contract holder. The Department of Transportation or the Department of Environmental Protection, as appropriate, in consultation with the task force, shall solicit requests for proposals and negotiate contracts.

16. Section 11 of P.L.1997, c.97 (C.12:6B-7) is amended to read as follows:

C.12:6B-7 Rules, regulations.

11. a. The Department of Environmental Protection shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to effectuate the purposes of this act.

b. The Department of Transportation shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to effectuate the purposes of this act.

17. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 430

AN ACT concerning electric personal assistive mobility devices, amending P.L.1977, c.411 and supplementing chapter 4 of Title 39 of the Revised Statutes.

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

C.39:4-14.10 Electric personal assistive mobility device defined; regulations concerning.

1. a. As used in this act, "electric personal assistive mobility device" means a self-balancing non-tandem two wheeled device designed to transport one person which uses an electric propulsion system with average power of 750 watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while operated by a person weighing 170 pounds is less than 20 miles per hour. The device shall not be considered a motorized wheelchair, motorized bicycle, motorcycle, motorized scooter, motorized skateboard, vehicle or motor vehicle.

b. An electric personal assistive mobility device may be operated on the public highways, sidewalks and bicycle paths of the State. Every person operating such a device shall be granted all of the rights and be subject to all of the duties applicable to the driver of a bicycle by chapter four of Title 39 of the Revised Statutes except as to those provisions thereof which by their nature can have no application.

c. The operator of an electric personal assistive mobility device shall not be required to obtain a driver's license therefor or to register the device. The operator shall not be required to furnish proof of having liability insurance for the device or other proof of financial responsibility.

d. The governing body of any municipality may, by ordinance, regulate the operation of electric personal assistive mobility devices upon the roadways and public properties under municipal jurisdiction. The State or the governing body of any county or municipality may prohibit their operation on any public highway under its jurisdiction where the speed limit is greater than 25 miles per hour.

e. Notwithstanding the other provisions of this section, an operator of an electric personal assistive mobility device shall;

- (1) wear a helmet while operating that device;
- (2) be 16 years of age or older, except for an operator with a mobility-related disability; and
- (3) only be a government employee or employee of a commercial establishment performing his assigned duties or an operator with a mobility-related disability.

2. Section 4 of P.L.1997, c.411 (C.39:4-10.8) is amended to read as follows:

C.39:4-10.8 Warning notice for roller skates, skateboards, electric personal assistive mobility devices; immunity from civil liability.

4. a. It shall be unlawful to manufacture, assemble, sell, offer to sell or distribute roller skates, skateboards or electric personal assistive mobility devices unless such roller skates, skateboards or electric personal assistive mobility devices contain a warning notice consistent with the requirements of this section.

b. The warning notice required by subsection a. of this section shall be placed in at least one of the following locations and shall be clearly visible to the consumer: (1) on one roller skate in each pair of roller skates or on the skateboard; (2) on the outside of the box or other container in which the roller skates, skateboard or electric personal assistive mobility device are offered for sale at retail; or (3) on any user's guide or instruction manual

provided with the roller skates, skateboard or electric personal assistive mobility device.

c. The warning notice required by subsection a. of this section must be printed in clear and conspicuous type and be substantially similar to the following notice: "WARNING! REDUCE THE RISK OF SERIOUS INJURY AND ONLY USE WHILE WEARING FULL PROTECTIVE GEAR -- HELMET, WRIST GUARDS, ELBOW PADS AND KNEE PADS."

d. A person, firm, corporation or other legal entity regularly engaged in the business of manufacturing or assembling roller skates, skateboards or electric personal assistive mobility devices who complies with the requirements of this section shall not be liable in a civil action for damages for any physical injury sustained by a user of roller skates, a skateboard or an electric personal assistive mobility device as a result of that user's failure to wear a helmet in accordance with the provisions of this act.

C.39:4-14.11 Noncompliance with regulations on electric personal assistive mobility device operation, warning, fine.

3. An operator who fails to comply with the requirements of this act shall receive a warning for the first offense. For a second offense, the operator shall be fined \$10. For a subsequent offense, the device shall be impounded for not more than 30 days. A person who fails to comply with the requirements governing warning notices shall be fined not more than \$100 for each violation.

4. This act shall take effect immediately

Approved January 8, 2002.

CHAPTER 431

AN ACT authorizing members of the Executive and Legislative Branches of State government to enter into multistate discussions of an agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of sales and use tax compliance for all sellers and all types of commerce, supplementing P.L.1966, c.30 (C.54:32B-1 et seq.).

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

C.54:32B-44 Short title.

1. This act shall be known and may be cited as the "Uniform Sales and Use Tax Administration Act."

C.54:32B-45 Definitions relative to "Uniform Sales and Tax Administration Act.

2. As used in this Act:

"Agreement" means the Streamlined Sales and Use Tax Agreement;

"Certified automated system" means software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

"Certified service provider" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions;

"Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

"Sales and use tax" means the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.);

"Seller" means a person making sales, leases, or rentals of personal property or services; and

"State" means a state of the United States and the District of Columbia.

C.54:32B-46 Legislative findings.

3. The Legislature finds that this State should enter into an Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

C.54:32B-47 Entry into multistate discussions.

4. For the purposes of reviewing, amending, or reviewing and amending the Agreement embodying the simplification requirements in section 7 of this act, the State shall enter into multistate discussions. For purposes of such discussions, the State shall be represented by the following four delegates or their designees: the State Treasurer, the Director of the Division of Taxation in the Department of the Treasury, a member of the Senate, as determined by the Senate President, and a member of the General Assembly, as determined by the Speaker of the General Assembly.

C.54:32B-48 Entry into Streamlined Sales and Use Tax Agreement authorized.

5. The State Treasurer is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to

substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the Agreement, the State Treasurer is authorized to act jointly with other states that are members of the Agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The State Treasurer is further authorized to take other actions reasonably required to implement the provisions set forth in this act. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The State Treasurer or the State Treasurer's designee is authorized to represent this State before the other states that are signatories to the Agreement.

C.54:32B-49 Existing law unaffected.

6. No provision of the Agreement authorized by this act in whole or part shall invalidate or amend any provision of the law of this State. Adoption of the Agreement by this State shall not be deemed to amend or modify any law of this State. Implementation of any condition of the Agreement in this State, whether adopted before, at, or after membership of this State in the Agreement, shall be by the action of this State.

C.54:32B-50 Requirements for entry into agreement.

7. The State Treasurer shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement requires each state to abide by the following requirements:

a. Uniform State Rate. The Agreement shall set restrictions to achieve more uniform state rates through the following:

(1) Limiting the number of state rates.

(2) Limiting the application of maximums on the amount of state tax that is due on a transaction.

(3) Limiting the application of thresholds on the application of state tax.

b. Uniform Standards. The Agreement shall establish uniform standards for the following:

(1) The sourcing of transactions to taxing jurisdictions.

(2) The administration of exempt sales.

(3) The allowances a seller can take for bad debts.

(4) Sales and use tax returns and remittances.

c. Uniform Definitions. The Agreement shall require states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

d. **Central Registration.** The Agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

e. **No Nexus Attribution.** The Agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

f. **Local Sales and Use Taxes.** The Agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting and eliminating variances between the state and local tax bases.

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.

(3) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

(4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

g. **Monetary Allowances.** The Agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

h. **State Compliance.** The Agreement shall require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.

i. **Consumer Privacy.** The Agreement shall require each state to adopt a uniform policy for Certified Service Providers that protects the privacy of consumers and maintains the confidentiality of tax information.

j. **Advisory Councils.** The Agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the Agreement.

C.54:32B-51 Purpose of Agreement.

8. The Agreement authorized by this Act is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the applica-

tion and administration of sales and use taxes under the duly adopted law of each member state.

C.54:32B-52 Agreement binds, inures to benefit of member states.

9. a. The Agreement authorized by this act binds and inures only to the benefit of this State and the other member states. No person, other than a member state, is an intended beneficiary of the Agreement. Any benefit to a person other than a state shall be established by the law of this State and the other member states and not by the terms of the Agreement.

b. Consistent with subsection a. of this section, no person shall have any cause of action or defense under the Agreement or by virtue of this State's approval of the Agreement. No person shall challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this State, or any political subdivision of this State on the ground that the action or inaction is inconsistent with the Agreement.

c. No law of this State, or the application thereof, shall be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

C.54:32B-53 Certified service provider serves as agent of a seller.

10. a. A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider shall be liable for sales and use tax due each member state on all sales transactions it processes for the seller except as otherwise provided in this section.

A seller that contracts with a certified service provider shall not be liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller shall not be subject to audit on the transactions processed by the certified service provider. A seller shall be subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

b. A person that provides a certified automated system shall be responsible for the proper functioning of that system and shall be liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated

system remains responsible and shall be liable to the state for reporting and remitting tax.

c. A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system shall be liable for the failure of the system to meet the performance standard.

11. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 432

AN ACT appropriating \$1,056,120 from the "Garden State Historic Preservation Trust Fund" for the purpose of making grants, as awarded by the New Jersey Historic Trust, for certain historic preservation projects.

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

1. a. There is appropriated from the "Garden State Historic Preservation Trust Fund," established pursuant to section 21 of P.L.1999, c.152 (C.13:8C-21), to the New Jersey Historic Trust the sum of \$1,056,120 for the purpose of making grants, as awarded by the New Jersey Historic Trust, for historic preservation projects listed in this subsection. The following projects are eligible for funding with the moneys appropriated pursuant to this subsection:

County	Municipality	Name of Organization	Project Name	Grant Award
Bergen	Demarest Boro	Demarest Boro	Demarest Railroad Station	\$26,662
Bergen	Ho-Ho-Kus Boro	Friends of the Hermitage	The Hermitage	7,500
Bergen	Rutherford Boro	Felician	The Castle College	50,000
Bergen	Woodcliff Lake Boro	Woodcliff Lake Boro	Historic Westervelt-Lydecker House	36,600
Burlington	Bordentown City	Bordentown City	Gilder House	28,706
Burlington	Eastampton Township	Burlington County	Smithville Park	50,000

Burlington	Moorestown Township	Perkins Center for the Arts	Perkins Center for the Arts	25,628
Burlington	Pemberton Township	Whitesbog Preservation Trust	Whitesbog Farm	9,207
Camden	Camden City	Roman Catholic Diocese of Camden	Cathedral of the Immaculate Conception	15,712
Camden	Camden City	Roman Catholic Diocese of Camden	St. Joseph's Catholic Church	19,312
Camden	Cherry Hill Township	Cherry Hill Township	Barclay Farmstead/ Croft Farm	22,875
Camden	Pine Hill Boro	Pine Hill Boro	Tomlinson House	9,412
Cape May	Cape May City	Center for Community Arts	Franklin Street School	17,993
Cape May	North Wildwood City	North Wildwood City	Hereford Inlet Light Station	21,000
Cumberland	Commercial Township	Delaware Bay Schooner Project	Bivalve Shipping Sheds and Wharves	37,500
Cumberland	Fairfield Township	Presbytery of West Jersey	Fairfield Presbyterian "Old Stone" Church	7,500
Essex	Bloomfield Township	Oakeside Bloomfield Cultural Center	Oakeside Bloomfield Cultural Center	12,975
Essex	East Orange City	Black United Fund	Ambrose Ward Mansion	33,188
Essex	Newark City	Ahavas Sholom	Ahavas Sholom	25,725
Essex	Village of South Orange Township	South Orange Historic and Preservation Society	The Old Stone House	6,413
Hudson	Jersey City	Our Lady of Czestochowa Roman Catholic Church	Our Lady of Czestochowa Roman Catholic Church	32,550
Hunterdon	Flemington Boro	Hunterdon County	Historic Hunterdon County Courthouse	50,000
Hunterdon	Lambertville City	Lambertville City	A.H. Holcombe House/ Lambertville City Hall	40,500
Mercer	Hopewell Twp	Mercer County	Noah Hunt House	49,178
Middlesex	New Brunswick City	Christ Episcopal Church	Christ Episcopal Church	50,000
Monmouth	Middletown Township	Monmouth County Historical Association	Taylor-Butler House/ Marlpit Hall	5,250
Morris	Dover Town	St. John's Episcopal Church	St. John's Episcopal Church	6,645

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Morris	Mendham Boro	Mendham Boro	The Phoenix House	33,225
Morris	Morris Township	Morris County Parks Commission	Fosterfields Living Historical Farm	50,000
Morris	Morristown	Morris County Historical Society	Acorn Hall	10,155
Ocean	Berkeley Township	Berkeley Township	Manitou Park School	30,000
Ocean	Island Heights Boro	Island Heights Boro	Wanamaker Hall	35,715
Passaic	Wayne Township	Wayne Township	Schuyler-Colfax Historic House Museum	50,000
Somerset	Bound Brook Boro	Somerset County Cultural Arts	Brook Theatre	7,223
Union	Plainfield City	Crescent Avenue Presbyterian Church	Crescent Avenue Presbyterian Church	50,000
Union	Union Township	Union Township Historical Society	The Caldwell Parsonage	33,121
Warren	Hardwick Township	Local Preservation Society	The Vass Farmstead	28,650
TOTAL				\$ 1,056,120

b. Any transfer of any funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit or qualifying tax exempt nonprofit organization that previously received funding for historic preservation purposes appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Historic Preservation Trust Fund, shall be eligible to receive additional funding, as determined by the New Jersey Historic Trust, subject to the approval of the Joint Budget Oversight Committee or its successor.

For the purposes of this subsection, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, and P.L.1987, c.265.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 433

AN ACT changing the phase-out schedule of the transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales and amending P.L.1997, c.162.

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

1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to read as follows:

C.54:30A-102 Establishment of remitter's transition energy facility assessment.

38. Each remitter's transitional energy facility assessment shall be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34). Under no circumstances shall an assessment be made under this act for any year commencing after December 31, 2006.

2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to read as follows:

C.54:30A-105 Statement of liability from remitter due October 15.

41. a. Every remitter shall on or before October 15, 1998, and on or before October 15, in each year thereafter for years in which the transitional energy facility assessment is imposed, return to the Director of the Division of Taxation in the Department of the Treasury and the Board of Public Utilities a statement in such form, manner and detail as the director shall require showing the actual transitional energy facility assessment liability from January 1 through September 30 and estimated liability from October 1 through December 31 for the current calendar year.

b. On or before November 15, 1998, and on or before November 15 of each year thereafter for years in which the transitional energy facility assessment is imposed, the State Treasurer shall, with the cooperation of the Board of Public Utilities, calculate the percentage reduction, as may be applicable, in the initial TEFA unit rate surcharges or the calendar year 2001 TEFA unit rate surcharges based upon the formula set forth in section 67 of P.L.1997, c.162 (C.48:2-21.34) and the board shall report the amount of such reduction, if any, to the remitters subject to the transitional energy facility assessment.

c. Every remitter shall on or before February 1, 1998 file with the director a statement showing:

(1) The total public utility tax advance payments paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

(2) The remitter's base year liability and each of the amounts described in subsections (a), (b) and (c) in the definition of "base year transitional energy facility assessment" in section 37 of P.L.1997, c.162 (C.54:30A-101).

d. For any remitter owning or holding both gas and electric facilities and conducting both gas and electric business in this State each of the amounts reported on the return required to be filed pursuant to subsection c. shall be allocated by the director between those operations in the proportion that the sum of the unit-based taxes bore to the whole of the unit-based taxes in the base year or such other allocation methodology as the director shall prescribe.

e. The statements required pursuant to this section shall be subscribed and sworn to by the president, a vice-president or chief officer of the corporation preparing each statement. Any remitter refusing or neglecting to make the statements herein provided for shall forfeit and pay to the State of New Jersey the sum of \$100 per day for each day of such refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, shall be paid into the State Treasury. It shall be the duty of the director to certify any such default to the Attorney General of the State who, thereupon, shall prosecute an action at law for each penalty.

f. The Director of the Division of Taxation shall audit and verify the statements filed by remitters whenever and in such respects the director shall deem necessary or advisable. The director may require any remitter to supply additional data and information in such form, manner, and detail as the director shall request, whenever the director may deem it necessary or helpful, for the proper performance of the director's duties under this act.

g. The director may, by regulation, additionally require that all filings required for the calculation and certification of assessment to be paid by remitters established pursuant to this act shall be made in an electronic form. The form and content of the electronic filing message, the circumstances under which the electronic filing message shall serve as a substitute for the filing of another return and the means by which remitters shall be determined to be subject to this electronic filing requirement shall be prescribed by the director.

For the purpose of this act "electronic filing" or "electronic filings" means any message that is initiated through an electronic terminal, telecommunication device, or computer for the purpose of fulfilling the reporting responsibilities set forth hereinabove.

3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to read as follows:

C.54:30A-107 Liability for TEFA assessment.

43. a. (1) The liability for the transitional energy facility assessment made against any remitter in the first year of assessment shall be an amount equal to TEFA unit rate surcharges (excluding the provision for corporation business taxes included therein) determined in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the associated therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey in the first year plus any advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) by that remitter.

(2) The liability for the transitional energy facility assessment made against any remitter for each year subsequent to the first year shall be an amount equal to the TEFA unit rate surcharges (excluding the provision for corporation business taxes included therein) calculated in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year multiplied by the associated therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey in that year.

b. A credit against the liability determined pursuant to paragraph (1) of subsection a. of this section shall be taken in the first year by the remitter in the amount of all advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.).

c. (1) Each remitter shall make an estimated payment on May 15 of the first assessment year in the amount of the base year transitional energy facility assessment.

(2) Subsequent to the first year, each remitter shall make an estimated payment on May 15 of each assessment year in which the transitional energy facility assessment is in effect, in an amount equal to the transitional energy facility assessment liability described in subsection a. of this section for the immediately preceding assessment year, excluding advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction percentage, if any, for the current assessment year determined pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits described in subsection d. of this section, if any.

d. Any excess of the estimated payment made pursuant to paragraph (1) or (2) of subsection c. of this section over the liability determined pursuant to subsection a. of this section shall be treated as a credit against the estimated payment for the subsequent assessment year and reduce the amount of the estimated payment required to be made for that subsequent year. Any excess of the estimated payment made pursuant to paragraph (2)

of subsection c. of this section over the liability for the final year of the transitional energy facility assessment shall be utilized as a nonrefundable credit with an unlimited carryforward against that remitter's corporation business tax liability in the subsequent privilege period year. Such credit shall be applied in full to each estimated corporation business tax payment beginning in the subsequent privilege period until fully utilized.

4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to read as follows:

C.48:2-21.34 Definitions relative to 1997 tax changes; filings required; formulas; adjustments to rates.

67. a. As used in this section:

"Base rates" means the rates, including minimum bills, charged for utility commodities or service subject to the board's jurisdiction, other than the rates charged under a utility's levelized energy adjustment clause, hereinafter "LEAC," or levelized gas adjustment clause, hereinafter "LGAC," or equivalent rate provision;

"Base year" means the calendar year 1996;

"Board" means the Board of Public Utilities;

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2);

"Utility" means a public utility subject to regulation by the board pursuant to Title 48 of the Revised Statutes; and

"Utility service" means the supply, transmission, distribution or transportation of electricity, natural gas or telecommunications services or any combination of such commodities, processes or services.

b. No later than 60 days after the date this act is enacted, each electric, gas and telecommunications utility subject to the provisions of this act shall file with the board, and shall simultaneously provide copies to the Director of the Division of the Ratepayer Advocate, revised tariffs and such other supporting schedules, narrative and documentation required by this act, as set forth in this section, to reflect in the utility's rates the changes in tax liability effected pursuant to this act. No later than 90 days after the date of the utility's filing, and after determining that the filing and the rate changes provided for therein are in compliance with the provisions of this act, the board shall approve the utility's filing and associated rates for billing to the utility's customers, effective for utility service rendered on and after January 1, 1998. If the board determines that the utility's filing and the associated rate changes provided for therein are not in compliance with the provisions of this act, the board shall require the utility to amend or otherwise modify its filing to render it in compliance. The board may also permit the rates

provided for in the utility's filing to be implemented on an interim basis pending the board's final determination in the event the board, in its discretion, determines that due to the filing's complexity, or for other valid reasons, including but not limited to the enactment of this act after June 30, 1997, additional time is needed for the board to complete its review of the filing. If the rates approved by the board upon its final determination are less than the rates implemented on an interim basis, the difference shall be refunded to the utility's customers with interest computed in accordance with N.J.A.C.14:3-7.5(c). The rate adjustments implemented pursuant to this act shall not constitute a fixing of rates pursuant to R.S.48:2-21 and shall not be subject to the hearing requirements set forth in that section.

c. As of the effective date of the rate changes implemented pursuant to this act, and except for rates applicable to sales that were or are currently exempt from the unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates applicable to sales to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies, the board shall remove from the base rates of each electric public utility and gas public utility the unit tax rates included therein for the recovery of those unit-based energy taxes, and include therein provision for the recovery of corporation business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and additionally shall authorize the collection of the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

(1) The base rates of each gas and electric utility shall be reduced by the amount of the unit-based energy taxes per kilowatthour or per therm included therein.

(2) The provision for corporation business tax initially included in the base rates of each gas and electric utility shall be based on the utility's after-tax net income earned in the base year as booked, unless the board determines, in its discretion, that such income as booked is unusually high or low or otherwise unrepresentative of the utility's prospective net income, in which case the utility's base year net income shall be adjusted as determined by the board.

To permit the board to make this determination, in addition to including in its filing schedules showing its net income earned in the base year as booked, the utility shall include adjustments to such booked income to eliminate the effect of revenues, expenses and extraordinary or other charges that are non-recurring, atypical, or both, including, but not limited to an adjustment to eliminate the effect of unusually hot or cold weather, and that would otherwise make the utility's base year net income unusually high or low or otherwise unrepresentative of the utility's prospective net income. If the adjustment is being made to eliminate the effect of unusually hot or cold weather, associated revenue and expense adjustments shall also

be made. Subject to the board's approval, such adjusted income shall be the basis for the calculation of the initial provision for corporation business tax to be included in the utility's base rates.

The utility shall also include a calculation of its rate of return on common equity achieved in the base year, both as booked and as adjusted in accordance with the foregoing. The calculation shall be made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1, and shall separately show the effect of reflecting adjustments to the calculation, if any, that may have been employed historically in establishing the utility's rate of return on common equity allowed for ratemaking purposes. The utility's filing shall also include copies of its audited financial statements for the base year and associated quarterly and other reports filed with the Securities and Exchange Commission.

To reflect the provision for corporation business tax in base rates, the demand charges, or charges per kilowatt, decatherm or million cubic feet; the energy charges, or charges per kilowatthour or per therm; and the customer charges, or charges other than demand and energy charges, set forth in each base rate schedule, and the floor price employed in parity rate schedules, included in the utility's tariff filed with and approved by the board shall be increased by amounts determined by multiplying such charges by the adjustment factor, "A e, g" derived below:

$$\frac{A e, g = (I e, g) \times [Rs / (1 - Re)]}{(Br e, g)}$$

where:

"A e, g" means the adjustment factor applicable to electric base rates (e), gas base rates (g), or both, other than rates applicable to sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"I e, g" means the utility's base year after-tax net income from electric or gas sales, or both, and transportation service subject to the board's jurisdiction and other operating revenue if such revenue is reflected in the utility's cost of service for ratemaking purposes, adjusted as approved by the board;

"Br e, g" means the utility's base year revenue from base rates applicable to electric or gas sales, or both, and transportation service subject to the board's jurisdiction, but excluding sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"Rs" means the corporation business tax rate, expressed as a decimal;
"Rf" means the applicable federal corporation income tax rate expressed as a decimal; and

"Re" equals $R_s + R_f(1-R_s)$.

The utility shall account for the changes in tax liability provided for by this act effective January 1, 1998. Such accounting shall include the recording on the utility's income statement and balance sheet of deferred corporation business tax defined, for book accounting purposes, as differences in corporation business tax expense arising from timing differences in the recognition of revenue and expenses for book and tax purposes.

(3) When billed to the utility's customers, the adjusted base rate charges determined pursuant to paragraphs (1), (2), and (4) of this subsection, and the charges determined pursuant to the utility's levelized energy adjustment clause, levelized gas adjustment clause, or both, as determined both upon the effective date of the rate changes authorized by this act and as revised prospectively in accordance with the utility's tariff filed with and approved by the board, and the transitional energy facility assessment unit rate surcharges, hereinafter, "TEFA unit rate surcharges," determined in accordance with subsection d. of this section, shall be increased by an amount determined by multiplying such charges by the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the utility's rates for service included in its tariff, for informational purposes the tariff shall include such rates after application of the sales and use tax authorized by this section.

(4) The utility's filing with the board to implement the rate changes provided for by this act shall include an analysis, description, and quantification of the effect of the changes in rates and tax payments implemented pursuant to this act on the utility's requirement for cash working capital, and if such requirement is less than the cash working capital allowed for the collection and payment of unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base rates in effect prior to the rate changes implemented pursuant to this act, and to the extent the working capital reduction is not offset by a reduction in net deferred taxes as provided for below, such base rates shall be reduced by the reduction in the utility's revenue requirement associated with the remaining reduction in the working capital requirement not so offset, if any. The reduction in working capital shall be determined by using the same methodology employed in establishing the working capital allowance related to unit-based energy taxes reflected in the utility's base rates in effect prior to the rate changes implemented pursuant to this act. The reduction in the utility's revenue requirement associated with the

reduced working capital requirement shall be calculated using the utility's last overall rate of return allowed by the board, including provision for federal income taxes and the corporation business tax implemented pursuant to this act payable on the equity portion of the return, and shall be implemented on the effective date of the rate changes provided for, and in the manner set forth in paragraph (2) of this subsection.

If the utility's requirement for cash working capital is increased as a result of the changes in rates and tax payments implemented pursuant to this act, the utility may accrue carrying costs, calculated at its last overall rate of return allowed by the board and applied on a simple annual interest basis without compounding, on the increased working capital requirement and request recovery of such carrying costs in a rate proceeding before the board.

The working capital-related base rate changes and carrying cost accruals shall be subject to the board's approval, and shall not be included in the determination of the TEFA unit tax surcharges provided for in subsection d. of this section.

The utility's filing with the board to implement the rate changes provided for by this act shall also include an analysis, description and quantification of net deferred taxes. For the purposes of this section, "net deferred taxes" means deferred corporation business taxes, net of federal deferred income taxes, associated with the tax and rate changes implemented pursuant to this act, including deferred corporation business tax recorded in accordance with section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the calendar year in which this act takes effect and for each year of the tax life of the asset giving rise to the deferred corporation business taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

If the change in such net deferred taxes projected for the calendar year in which the rate changes implemented pursuant to this act takes effect is negative and if the utility's requirement for working capital is reduced as a result of the changes in rates and tax payments implemented pursuant to this act, the working capital-related rate reduction that otherwise would have been implemented pursuant to this subsection shall be treated as set forth in subparagraph (a) or (b) of this paragraph. For the purposes of this act, a change in net deferred taxes is considered negative when it reduces an existing deferred tax liability or creates a deferred tax asset on the utility's balance sheet. An appropriate rate adjustment for the working capital impacts of this act, reflecting all relevant facts and circumstances at the time of the adjustment, shall be made in the year when the earlier of the following events occur:

(a) The year in which the reduction in carrying costs assumed for the rate reduction for working capital that would have been made but for this

paragraph is no longer required to offset, on a present value basis, the annual carrying costs calculated on the accumulated balance of negative net deferred taxes projected to be recorded by the utility, its successors and assigns, over the tax life of the single asset account giving rise to such net deferred taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph (a):

(i) Carrying costs and present values are to be computed using the weighted average after-tax rate of return approved by the board in the utility's last base rate proceeding.

(ii) The accumulated balance of such negative net deferred taxes shall include net deferred taxes associated with all assets and liabilities originally placed in service by the utility and held by the utility or a company affiliated with the utility regardless of whether or not such assets continue to be subject to regulation by the New Jersey Board of Public Utilities.

(b) The year in which both an appropriate working capital adjustment and the accumulated balance of negative deferred taxes, as described in (ii) of subparagraph (a) of this paragraph (4), are reflected in the utility's rate base in a rate proceeding before the board. It is the intent of this section to fully compensate utilities on a present value basis, for the carrying costs associated with negative net deferred taxes arising as a result of this act, and to remit to ratepayers any credit due them as a result of any overcompensation as may have occurred due to the treatment of working capital and deferred taxes as set forth herein or in subparagraph (a) of this paragraph (4). At the time the above base rate adjustment is made, an analysis shall be made to determine if such carrying costs have been or will be fully recovered pursuant to the intent of this provision and any additional credit or charge to ratepayers to adjust for ratepayer overpayments or underpayments, if any shall be addressed.

If the change in net deferred taxes is positive, the increase shall be added to, or increase, the reduction in the utility's requirement for working capital if the requirement is reduced as a result of the rate and tax payment changes implemented pursuant to this act, or subtracted from the working capital requirement if it is increased, and the resultant net working capital requirement shall be reflected in rates or accrue carrying costs in the same manner as prescribed for changes in the utility's requirement for working capital above.

The deferred tax-related rate changes or carrying cost accruals shall be subject to the board's approval and shall not be included in the determination of the TEFA unit rate surcharges provided for in subsection d. of this section.

d. (1) Electric and gas utilities shall file, for the board's review and approval, initial TEFA unit rate surcharges determined by deducting from

each unit-based energy tax unit tax rate effective January 1, 1997 the following: (a) An amount per kilowatt-hour or per therm determined by multiplying the total revenue received in the base year from sales to which that unit tax rate would have been applicable by the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and dividing the result by the kilowatt-hours or therms billed in that unit tax rate class in the base year; and (b) An amount per kilowatt-hour or per therm determined by dividing the revenue that would have been received in the base year from the inclusion, in the manner prescribed in paragraph (2) of subsection c. of this section, of the corporation business tax in the rates applicable to sales billed in that unit tax rate class by the kilowatt-hours or therms billed in that rate class. In each case, the determination shall reflect the effect of adjustments that affect the level of sales and revenue, if any, as provided in subsection c. of this section. Of the resultant rate per kilowatt-hour or per therm, the portion for recovery of the utility's transitional energy facilities assessment liability shall be determined by multiplying such rate by the factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed as a decimal. The TEFA unit rate surcharges shall constitute non-bypassable wires and/or mains charges of the utility, and shall be applied to all sales within the customer classes to which they apply, regardless of whether such customers are purchasing bundled or unbundled services from the utility, but shall not be applied to sales that were or are currently exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

If, following the effective date of this act, a customer taking bundled service from the utility shall elect to obtain its requirements from another supplier and take transportation or wheeling service from the utility, the TEFA unit rate surcharge applicable to the bundled service shall continue to apply to the transportation or wheeling service. The TEFA components of the unit rate surcharges determined pursuant to this subsection (the components of the surcharges remaining after deducting the provision for corporation business tax included therein) shall be used to determine the transitional energy facility assessment liability pursuant to sections 36 through 49 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

(2) Unless reduced pursuant to paragraphs (3) and (4) of this subsection, the initial TEFA unit rate surcharges are to be reduced annually on January 1, 1999 through January 1, 2001 by the following percentages:

January 1, 1999,	20%
January 1, 2000,	40%
January 1, 2001,	60%

(3) For each year beginning with calendar year 1998 and ending with calendar year 2001, the TEFA surcharge adjustment shall be determined as the difference between:

(a) The sum of the estimated, or actual when known, (i) TEFA liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107), and sales and use taxes collected and corporation business taxes booked for the year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA liabilities of those utilities and entities in all years following the year 1998 through the year in which a determination is being made pursuant to this subsection (the determination year); and

(b) The sum of (i) the total of each remitter's base year liability, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the cumulative TEFA obligation, defined as the sum through the determination year of the amounts calculated by multiplying, for the applicable year, the percentage in the second column of the following table:

Determination Year	% of Year 1998 TEFA
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1999	80%
2000	60%

by the Year 1998 TEFA,

where the Year 1998 TEFA is calculated as the total of each remitter's base year liability less the sales and use taxes collected and the corporation business taxes booked for the privilege period ending in calendar year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act. For purposes of this subsection, the amounts assumed for the determination year, including the year 1998 liability when first determined for the purposes of this subsection, shall be estimates based on nine months of actual data through and including the month of September, and three months of data forecast for the months of October through December.

(4) If the TEFA surcharge adjustment determined for the determination year is positive (that is, if the amount determined pursuant to subparagraph (a) of paragraph (3) of this subsection is greater than the amount determined pursuant to subparagraph (b) of paragraph (3) of this subsection), no reduction shall be made in the reduction in the TEFA unit rate surcharges provided for in paragraph (2) of this subsection for the year following the determination year. If the TEFA surcharge adjustment is negative, the

reduction in the TEFA unit rate surcharges that otherwise would have been implemented on January 1 of the year following the determination year pursuant to paragraph (2) of this subsection shall be reduced by an amount (by percentage points) equal to the percentage the TEFA surcharge adjustment is of the total of the base year transitional energy facility assessment of all remitters, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided however, that such reduction in the reduction in the TEFA unit rate surcharges shall not exceed the percentage shown in paragraph (2) of this subsection for that year; and provided further that in the first two years, that such reduction shall not exceed 10 percentage points for each year.

(5) (a) The TEFA unit rate surcharges for calendar years 2002 through 2004 shall be the same as the TEFA unit rate surcharges in effect for calendar year 2001.

(b) The TEFA unit rate surcharges in effect for calendar year 2004 shall be reduced annually on January 1, 2005 through January 1, 2006 by the following percentages:

January 1, 2005	33%
January 1, 2006	67%

e. The utility's filing with the board to implement the rate changes provided for by this act shall include proof of revenue schedules that show for each rate schedule included in the utility's tariff, aggregated by unit-based energy tax unit tax classes, the number of customers billed under the rate schedule, the billing determinants of such customers (i.e. the kilowatts of billing demand and kilowatthours of electric energy consumed, and the million cubic feet/decatherm subject to gas capacity-related charges and decatherm of gas consumed) and the associated revenue, both as booked in the base year and on a pro forma basis reflecting the rate changes implemented pursuant to this act. The proof of revenue shall additionally show the amount of unit-based energy taxes included in the base year revenue as booked, the unit-based energy taxes that would have been collected at the unit-based energy tax unit tax rates effective January 1, 1997, if different, as well as the corporation business tax, sales and use tax and transitional energy facility assessment revenue that would have been collected or received on a pro forma basis if the rates implemented pursuant to this act had been in effect in the base year.

f. The board may, in its discretion, permit the rate changes provided for this act to be implemented as part of a pending base rate case or other proceeding in which the utility's rates are to be changed, provided that the effective date of the changes is not delayed beyond the date on which the changes would have been implemented under subsection c. of this section. The board may also, pursuant to its powers provided by law, permit or require

further modifications in the implementation of this section to address unforeseen consequences arising out of the implementation of this act.

g. Customers of the utility who are exempt from the sales and use tax imposed on sales of gas and/or electricity or as a result of rate changes occurring prior to the effective date of this act or for other valid reasons are due a refund of sales or use tax inadvertently imposed on such customers as a result of implementing the rate changes provided for by this act shall file with the State Treasurer to obtain such refunds. The State Treasurer shall promptly notify the utility of customers granted refunds under this provision in order to prevent additional collections of the sales and use tax from such customers.

h. Public utilities providing telecommunications service regulated by the board shall file for the board's review and approval revised tariffs that eliminate from the rates applicable to such service the excise tax liability included therein pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the corporation business tax calculated using the methodology used in calculating the adjustment factor set forth in paragraph (2) of subsection c. of this section. Subsection d. of this section shall not apply to telecommunication utilities, and telecommunication utilities subject to a plan of regulation other than rate base/rate of return shall additionally not be required to file the rate of return information required by paragraph (2) of subsection c. Such utilities shall, however, include a narrative and/or other documentation as required by the board to support the reasonableness of the after-tax income, which may be adjusted to eliminate the effect of non-recurring or other atypical events, on which the corporate business tax inclusion in rates is based. Telecommunications utilities shall comply with all other applicable provisions of this section.

i. (1) The board shall not adjust the rates of a public utility, as provided in subsections c. and d. of this section, for a purchase by a cogenerator of natural gas and the transportation of that gas, that is exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall not allocate, in any future rate case, any sales and use tax, corporation business tax, or transitional energy facility assessment to rates for this purpose.

(2) The board shall adjust the rates, as provided in subsection c. of this section, for a purchase by a cogenerator of any quantity of natural gas and the transportation of that gas that is not exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).

(3) For the purposes of this section, "cogenerator" means a person or business entity that owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose

primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes, and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.

5. This act shall take effect immediately and be retroactive to January 1, 2002.

Approved January 8, 2002.

CHAPTER 434

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

46 DEPARTMENT OF HEALTH AND SENIOR SERVICES
20 *Physical and Mental Health*
22 *Health Planning and Evaluation*
GRANTS-IN-AID

07-4270 Health Care Systems Analysis	\$1,500,000
<i>Grants-in-Aid:</i>	
07 Health Care Subsidy Fund	
Payments (P.L.1997, c.263)	(\$1,500,000)

Of the monies hereinabove appropriated, \$750,000 shall be made available to the Atlantic City Medical Center and \$750,000 shall be made available to Monmouth Medical Center.

2. This act shall take effect immediately.

Approved January 8, 2002.

CHAPTER 435

AN ACT concerning affordable housing, amending and supplementing P.L.1985, c.222.

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

1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to read as follows:

C.52:27D-307 Duties of council.

7. It shall be the duty of the council, seven months after the confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier, and from time to time thereafter, to:

- a. Determine housing regions of the State;
- b. Estimate the present and prospective need for low and moderate income housing at the State and regional levels;
- c. Adopt criteria and guidelines for:

(1) Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period. Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall be entitled to a credit for a unit if it demonstrates that (a) the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; (b) a construction code official certifies, based upon a visual exterior survey, that the unit is in compliance with pertinent construction code standards with respect to structural elements, roofing, siding, doors and windows; (c) the household occupying the unit certifies in writing, under penalty of perjury, that it receives no greater income than that established pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income housing; and (d) the unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification. It shall be

sufficient if the certification required in subparagraph (c) is signed by one member of the household. A certification submitted pursuant to this paragraph shall be reviewable only by the council or its staff and shall not be a public record;

Nothing in P.L.1995, c.81 shall affect the validity of substantive certification granted by the council prior to November 21, 1994, or to a judgment of compliance entered by any court of competent jurisdiction prior to that date. Additionally, any municipality that received substantive certification or a judgment of compliance prior to November 21, 1994 and filed a motion prior to November 21, 1994 to amend substantive certification or a judgment of compliance for the purpose of obtaining credits, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81. Any municipality that filed a motion prior to November 21, 1994 for the purpose of obtaining credits, which motion was supported by the results of a completed survey performed pursuant to council rules, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81;

(2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever:

(a) The preservation of historically or important architecture and sites and their environs or environmentally sensitive lands may be jeopardized,

(b) The established pattern of development in the community would be drastically altered,

(c) Adequate land for recreational, conservation or agricultural and farmland preservation purposes would not be provided,

(d) Adequate open space would not be provided,

(e) The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),

(f) Vacant and developable land is not available in the municipality, and

(g) Adequate public facilities and infrastructure capacities are not available, or would result in costs prohibitive to the public if provided; and

(3) (Deleted by amendment, P.L.1993, c.31).

d. Provide population and household projections for the State and housing regions;

e. In its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with which the objection was filed.

For the purpose of crediting low and moderate income housing units in order to arrive at a determination of present and prospective fair share, as set forth in paragraph (1) of subsection c. of this section, housing units comprised in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or to be promulgated by the council, to the extent that the units are affordable to persons of low and moderate income and are available to the general public.

In carrying out the above duties, including, but not limited to, present and prospective need estimations the council shall give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and public comment. To assist the council, the State Planning Commission established under that act shall provide the council annually with economic growth, development and decline projections for each housing region for the next ten years. The council shall develop procedures for periodically adjusting regional need based upon the

low and moderate income housing that is provided in the region through any federal, State, municipal or private housing program.

2. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to read as follows:

C.52:27D-310 Essential components of municipality's housing element.

10. A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and

f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

3. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to read as follows:

C.52:27D-311 Provision of fair share by municipality.

11. a. In adopting its housing element, the municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low and moderate income housing. In preparing the housing element, the municipality shall consider the following techniques for providing low and moderate income housing within the municipality, as well as such other techniques as may be published by the council or proposed by the municipality:

(1) Rezoning for densities necessary to assure the economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the municipality's fair share;

(2) Determination of the total residential zoning necessary to assure that the municipality's fair share is achieved;

(3) Determination of measures that the municipality will take to assure that low and moderate income units remain affordable to low and moderate income households for an appropriate period of not less than six years;

(4) A plan for infrastructure expansion and rehabilitation if necessary to assure the achievement of the municipality's fair share of low and moderate income housing;

(5) Donation or use of municipally owned land or land condemned by the municipality for purposes of providing low and moderate income housing;

(6) Tax abatements for purposes of providing low and moderate income housing;

(7) Utilization of funds obtained from any State or federal subsidy toward the construction of low and moderate income housing;

(8) Utilization of municipally generated funds toward the construction of low and moderate income housing; and

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property, excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property,

pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2).

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing.

c. The municipality may propose that a portion of its fair share be met through a regional contribution agreement. The housing element shall demonstrate, however, the manner in which that portion will be provided within the municipality if the regional contribution agreement is not entered into. The municipality shall provide a statement of its reasons for the proposal.

d. Nothing in P.L.1985, c.222 shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), which will be affordable to persons of low and moderate income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited as permitted under the rules of the council towards the fulfillment of the municipality's fair share of low and moderate income housing.

f. It having been determined by the Legislature that the provision of housing under this act is a public purpose, a municipality or municipalities may utilize public monies to make donations, grants or loans of public funds for the rehabilitation of deficient housing units and the provision of new or substantially rehabilitated housing for low and moderate income persons, providing that any private advantage is incidental.

4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to read as follows:

C.52:27D-312 Regional contribution agreements.

12. a. A municipality may propose the transfer of up to 50% of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A municipality may also propose a transfer by contracting with the agency or another governmental entity designated by the council if the council determines that the municipality has exhausted all possibilities within its housing region. A municipi-

pality proposing to transfer to another municipality, whether directly or by means of a contract with the agency or another governmental entity designated by the council, shall provide the council with the housing element and statement required under subsection c. of section 11 of P.L.1985, c.222 (C.52:27D-311), and shall request the council to determine a match with a municipality filing a statement of intent pursuant to subsection e. of this section. Except as provided in subsection b. of this section, the agreement may be entered into upon obtaining substantive certification under section 14 of P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The regional contribution agreement entered into shall specify how the housing shall be provided by the second municipality, hereinafter the receiving municipality, and the amount of contributions to be made by the first municipality, hereinafter the sending municipality.

b. A municipality which is a defendant in an exclusionary zoning suit and which has not obtained substantive certification pursuant to P.L.1985, c.222 may request the court to be permitted to fulfill a portion of its fair share by entering into a regional contribution agreement. If the court believes the request to be reasonable, the court shall request the council to review the proposed agreement and to determine a match with a receiving municipality or municipalities pursuant to this section. The court may establish time limitations for the council's review, and shall retain jurisdiction over the matter during the period of council review. If the court determines that the agreement provides a realistic opportunity for the provision of low and moderate income housing within the housing region, it shall provide the sending municipality a credit against its fair share for housing to be provided through the agreement in the manner provided in this section. The agreement shall be entered into prior to the entry of a final judgment in the litigation. In cases in which a final judgment was entered prior to the date P.L.1985, c.222 takes effect and in which an appeal is pending, a municipality may request consideration of a regional contribution agreement; provided that it is entered into within 120 days after P.L.1985, c.222 takes effect. In a case in which a final judgment has been entered, the court shall consider whether or not the agreement constitutes an expeditious means of providing part of the fair share.

c. Regional contribution agreements shall be approved by the council, after review by the county planning board or agency of the county in which the receiving municipality is located. The council shall determine whether or not the agreement provides a realistic

opportunity for the provision of low and moderate income housing within convenient access to employment opportunities. The council shall refer the agreement to the county planning board or agency which shall review whether or not the transfer agreement is in accordance with sound, comprehensive regional planning. In its review, the county planning board or agency shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State development and redevelopment plan. In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the council shall also determine whether or not the agreement is in accordance with sound, comprehensive regional planning. After it has been determined that the agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities, and that the agreement is consistent with sound, comprehensive regional planning, the council shall approve the regional contribution agreement by resolution. All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the council may prescribe, beyond which the council shall make those determinations and no fee shall be paid to the county planning board or agency pursuant to this subsection.

d. In approving a regional contribution agreement, the council shall set forth in its resolution a schedule of the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Director of the Division of Local Government Services in the Department of Community Affairs, and the director shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution. Amounts appropriated by a sending municipality for a regional contribution agreement pursuant to this section are exempt from the limitations or increases in final appropriations imposed under P.L.1976, c.68 (C.40A:4-45.1 et seq.).

e. The council shall maintain current lists of municipalities which have stated an intent to enter into regional contribution agreements as receiving municipalities, and shall establish procedures for filing statements of intent with the council. No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimum number of units, not to

exceed 100, as established by the council. The council shall require a project plan from a receiving municipality prior to the entering into of the agreement, and shall submit the project plan to the agency for its review as to the feasibility of the plan prior to the council's approval of the agreement. The agency may recommend and the council may approve as part of the project plan a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the project shall be less than 30 years, if it is determined that modification is necessary to assure the economic viability of the project.

f. The council shall establish guidelines for the duration and amount of contributions in regional contribution agreements. In doing so, the council shall give substantial consideration to the average of: (1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. Contributions may be prorated in municipal appropriations occurring over a period not to exceed ten years and may include an amount agreed upon to compensate or partially compensate the receiving municipality for infrastructure or other costs generated to the receiving municipality by the development. Appropriations shall be made and paid directly to the receiving municipality or municipalities or to the agency or other governmental entity designated by the council, as the case may be.

g. The council shall require receiving municipalities to file annual reports with the agency setting forth the progress in implementing a project funded under a regional contribution agreement, and the agency shall provide the council with its evaluation of each report. The council shall take such actions as may be necessary to enforce a regional contribution agreement with respect to the timely implementation of the project by the receiving municipality.

5. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to read as follows:

C.52:27D-313 Petition for substantive certification.

13. a. A municipality which has filed a housing element may, at any time during a two-year period following the filing of the housing element, petition the council for a substantive certification

of its element and ordinances or institute an action for declaratory judgment granting it repose in the Superior Court, but in no event shall a grant of substantive certification extend beyond a 10-year period starting on the date the municipality files its housing element with the council. The municipality shall publish notice of its petition in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances in accordance with such procedures as the council shall establish. The council shall also establish a procedure for providing public notice of each petition which it receives.

b. Notwithstanding the provisions of subsection a. of this section, a municipality which filed a housing element prior to the effective date of P.L.1990, c.121, shall be permitted to petition for substantive certification at any time within two years following that filing, or within one year following the effective date of P.L.1990, c.121, whichever shall result in permitting the municipality the longer period of time within which to petition.

The Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.

C.52:27D-307.6 Methodology for change in calculation for use on June 7, 2000 and after.

6. The change in the calculation of a municipality's determination of present and prospective share of housing need as provided in P.L.2001,c.435 shall apply to the methodology employed by the council for the certification period beginning June 7, 2000 and thereafter.

7. This act shall take effect immediately.

Approved January 10, 2002.

CHAPTER 436

AN ACT concerning shade tree and community forest preservation license plates and amending P.L.1996, c.135.

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

1. Section 10 of P.L.1996, c.135 (C.39:3-27.79) is amended to read as follows:

C.39:3-27.79 Issuance of shade tree, community forest preservation license plates.

10. The Director of the Division of Motor Vehicles in the Department of Transportation shall, upon proper application therefor, issue shade tree and community forest preservation license plates for any motor vehicle, including a commercial motor vehicle issued a registration or license plate pursuant to R.S.39:3-20, owned or leased and registered in the State. In addition to the registration number and other markings or identification otherwise prescribed by law, a shade tree and community forest preservation license plate shall display words or a slogan and an emblem indicating support for, or an interest in, shade tree and community forest preservation except for a shade tree and community forest preservation license plate issued to a commercial motor vehicle which, in addition to the registration number and other markings prescribed by law, shall display an emblem indicating an interest in shade tree and community forest preservation in New Jersey. The words or slogan and emblem shall be chosen by the director; however, the director shall solicit, in conjunction with the Legislature, input from the general public on the design of the plate and shall review the submissions prior to choosing the design. Issuance of shade tree and community forest preservation license plates in accordance with this section shall be subject to the provisions of chapter 3 of Title 39 of the Revised Statutes, except as hereinafter otherwise specifically provided.

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

Approved January 10, 2002.

CHAPTER 437

AN ACT concerning pupil transportation, amending P.L.1981, c.57 and P.L.1997, c.53 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:

1. Section 2 of P.L.1981, c.57 (C.18A:39-1a) is amended to read as follows:

C.18A:39-1a Adjustment of nonpublic school transportation costs.

2. For the 2002-2003 school year, the maximum amount of nonpublic school transportation costs per pupil provided for in N.J.S.18A:39-1 shall equal \$735 and this amount shall be increased in each subsequent year in direct proportion to the increase in the State transportation aid per pupil in the year prior to the prebudget year compared to the amount for the prebudget year or by the CPI, whichever is greater.

As used in this section, State transportation aid per pupil shall equal the total State transportation aid payments made pursuant to section 25 of P.L.1996, c.138 (C.18A:7F-25) divided by the number of pupils eligible for transportation. "CPI" means the average annual increase, expressed as a decimal, in the consumer price index for the New York City and Philadelphia areas during the fiscal year preceding the prebudget year as reported by the United States Department of Labor.

In the 2002-2003 school year and thereafter, any additional costs incurred by a school district due to the increase in the maximum amount of nonpublic school transportation costs per pupil pursuant to this section shall be borne by the State.

C.18A:39-2.2 Determination of cost efficiencies by combining public, nonpublic school bus routes.

2. A county superintendent of schools, during the approval process of pupil transportation contracts conducted pursuant to N.J.S.18A:39-2, shall examine the contract to determine whether cost efficiencies could be realized by combining public and nonpublic school pupils on the same school bus routes.

3. This act shall take effect immediately and shall first apply to the 2002-2003 school year.

Approved January 10, 2002.

CHAPTER 438

AN ACT clarifying the taxation of steel outdoor advertising signs under the real property tax, amending R.S.54:4-1.

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

1. R.S.54:4-1 is amended to read as follows:

Property subject to taxation.

54:4-1. All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this chapter. Such property shall be valued and assessed at the taxable value prescribed by law. Land in agricultural or horticultural use which is being taxed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), shall be valued and assessed as provided by that act. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purpose of this act, a mortgage of said land for the unpaid balance of purchase price. Personal property taxable under this chapter shall include, however, only the machinery, apparatus or equipment of a petroleum refinery that is directly used to manufacture petroleum products from crude oil in any of the series of petroleum refining processes commencing with the introduction of crude oil and ending with refined petroleum products, but shall exclude items of machinery, apparatus or equipment which are located on the grounds of a petroleum refinery but which are not directly used to refine crude oil into petroleum products and the tangible goods and chattels, exclusive of inventories, used in business of local exchange telephone, telegraph and messenger systems, companies, corporations or associations that were subject to tax as of April 1, 1997 under P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, and shall not include any intangible personal property whatsoever whether or not such personalty is evidenced by a tangible or intangible chose in action except as otherwise provided by R.S.54:4-20. As used in this section, "local exchange telephone company" means a telecommunications carrier providing dial tone and access to 51% of a local telephone exchange. Property omitted from any assessment may be assessed by the county board of taxation, or otherwise, within such time and in such manner as shall be provided by law. Real property taxable under this chapter means all land and improvements thereon and includes personal property affixed to the real property or an appurtenance thereto, unless:

- a. (1) The personal property so affixed can be removed or severed without material injury to the real property;
- (2) The personal property so affixed can be removed or severed without material injury to the personal property itself; and
- (3) The personal property so affixed is not ordinarily intended to be affixed permanently to real property; or
- b. The personal property so affixed is machinery, apparatus, or equipment used or held for use in business and is neither a structure nor machinery, apparatus or equipment the primary purpose of which is to

enable a structure to support, shelter, contain, enclose or house persons or property. For purposes of this subsection, real property shall include pipe racks, and piping and electrical wiring up to the point of connections with the machinery, apparatus, or equipment of a production process as defined in this section.

c. Outdoor advertising signs of steel construction, their supporting steel structures, the primary purpose of which is to support an outdoor advertising sign, and other constituent parts are considered to meet the requirements of subsection a. of this section and do not constitute real property. Provided however, that the cement foundation to which the supporting structure is attached, and all underground piping and electrical wiring, up to the point of connections with the supporting structure, shall be considered real property.

Real property, as defined herein, shall not be construed to affect any transaction or security interest provided for under the provisions of chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101 et seq.). The provisions of this section shall not be construed to repeal or in any way alter any exemption from, or any exception to, real property taxation or any definition of personal property otherwise provided by statutory law.

The Director of the Division of Taxation in the Department of the Treasury may adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be deemed necessary to implement and administer the provisions of this act.

2. This act shall take effect immediately and apply to assessments made after enactment.

Approved January 10, 2002.

CHAPTER 439

AN ACT concerning municipal approval for the operation and construction of a crematorium and supplementing Title 8A of the New Jersey Statutes.

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

C.8A:3-14.2 Municipal approval for operation and construction of crematorium.

1. In addition to any other statutory or regulatory requirements, the governing body of a cemetery shall not build or operate a crematorium without the prior approval of the municipal governing body of the municipi-

pality in which the crematorium is proposed to be located. The municipal governing body shall not issue its approval unless it determines, following a public hearing, that the approval can be granted without substantial detriment to the public good. The municipal governing body may charge the governing body of the cemetery a reasonable fee for providing notice of the hearing.

2. This act shall take effect immediately.

Approved January 10, 2002.

CHAPTER 440

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, 2001 and regulating the disbursement thereof," approved June 30, 2000 (P.L.2000, c.53).

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.2000, c.53, there is appropriated out of the General Fund the following sum for the purpose specified:

42 DEPARTMENT OF ENVIRONMENTAL PROTECTION
40 Community Development and Environmental Management
42 Natural Resource Management
DIRECT STATE SERVICES

12-4875 Parks Management \$25,000
Total Direct State Services Appropriation,
Natural Resource Management \$25,000

Direct State Services:

Special Purpose:

12 Inventory, restoration, replacement,
and erection of historic markers (\$25,000)

The amount appropriated hereinabove for the inventory, restoration, replacement, and erection of historic markers account shall be used by the department for the inventory, restoration, and replacement of historic markers, and the erection of new historic markers, throughout the State. As part of the program implemented through this appropri

ation, the Commissioner of Environmental Protection, after consultation with the Historic Sites Council, shall solicit the volunteer services of appropriate historical organizations to provide assistance in support of these efforts.

2. This act shall take effect immediately.

Approved January 10, 2002.

CHAPTER 441

AN ACT concerning zoning for affordable housing and amending P.L.1985, c.222.

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

1. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to read as follows:

C.52:27D-311 Provision of fair share by municipality.

11. a. In adopting its housing element, the municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low and moderate income housing. In preparing the housing element, the municipality shall consider the following techniques for providing low and moderate income housing within the municipality, as well as such other techniques as may be published by the council or proposed by the municipality:

(1) Rezoning for densities necessary to assure the economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the municipality's fair share;

(2) Determination of the total residential zoning necessary to assure that the municipality's fair share is achieved;

(3) Determination of measures that the municipality will take to assure that low and moderate income units remain affordable to low and

moderate income households for an appropriate period of not less than six years;

(4) A plan for infrastructure expansion and rehabilitation if necessary to assure the achievement of the municipality's fair share of low and moderate income housing;

(5) Donation or use of municipally owned land or land condemned by the municipality for purposes of providing low and moderate income housing;

(6) Tax abatements for purposes of providing low and moderate income housing;

(7) Utilization of funds obtained from any State or federal subsidy toward the construction of low and moderate income housing;

(8) Utilization of municipally generated funds toward the construction of low and moderate income housing; and

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property; excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property, pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2001, c.126 (C.52:27D-311.2).

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing.

c. The municipality may propose that a portion of its fair share be met through a regional contribution agreement. The housing element shall demonstrate, however, the manner in which that portion will be provided within the municipality if the regional contribution agreement is not entered into. The municipality shall provide a statement of its reasons for the proposal.

d. Nothing in P.L.1985, c.222 shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), which will be affordable to persons of low and moderate income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited as permitted under the rules of the council towards the fulfillment of the municipality's fair share of low and moderate income housing.

f. It having been determined by the Legislature that the provision of housing under this act is a public purpose, a municipality or municipali

ties may utilize public monies to make donations, grants or loans of public funds for the rehabilitation of deficient housing units and the provision of new or substantially rehabilitated housing for low and moderate income persons, providing that any private advantage is incidental.

g. A municipality which has received substantive certification from the council, and which has actually effected the construction of the affordable housing units it is obligated to provide, may amend its affordable housing element or zoning ordinances without the approval of the council.

2. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 442

An Act establishing a college scholarship program, supplementing chapter 71B of Title 18A of the New Jersey Statutes and making an appropriation.

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

C.18A:71B-23.1 Short title.

1. This act shall be known and may be cited as the "New Jersey World Trade Center Scholarship Program Act."

C.18A:71B-23.2 Definitions relative to "New Jersey World Trade Center Scholarship Program Act."

2. As used in this act:

"Institution of higher education" means an institution of higher education licensed by the appropriate agency or department and accredited or preaccredited by a nationally recognized accrediting association. An institution of higher education shall also include certain proprietary institutions, but only for degree granting programs approved by the Commission on Higher Education or other proprietary institutions as determined by the authority.

"Authority" means the Higher Education Student Assistance Authority established pursuant to N.J.S.18A:71A-1 et seq.

C.18A:71B-23.3 New Jersey World Trade Center Scholarship Fund.

3. a. There is established in the Higher Education Student Assistance Authority a nonlapsing fund which shall be known as the New Jersey

World Trade Center Scholarship Fund. The fund shall be administered by the board of trustees established pursuant to section 4 of this act.

b. The fund shall consist of: all moneys appropriated by the Legislature for inclusion in the fund; investment earnings of the fund; and moneys contributed to the fund by private sources, to be used for the purposes of this act.

The moneys in the fund shall be invested and reinvested by the Director of the Division of Investment in the Department of the Treasury.

C.18A:71B-23.4 Board of Trustees; membership; duties; responsibilities.

4. a. The board of trustees of the New Jersey World Trade Center Scholarship Fund shall consist of the State Treasurer, or a designee, and ten public members appointed as follows: two by the President of the Senate, two by the Speaker of the General Assembly and six by the Governor, with the advice and consent of the Senate. Seven of the public members shall be persons who were directly affected by the terrorist attacks on the United States on September 11, 2001. Two of the public members shall be named by the Governor to serve as co-chairpersons of the board.

b. Each public member of the board shall serve for a term of four years and until a successor shall have been appointed and qualified; except that of the first members appointed, two shall serve for one year, two shall serve for two years, three shall serve for three years and three shall serve for four years. Any vacancy in the membership of the board shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

c. Members of the board shall serve without compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties.

d. The board shall have the following duties and responsibilities:

(1) establish criteria for the determination of eligibility for a scholarship from the fund;

(2) establish procedures for determining the amount of each scholarship award, based on the financial need of the applicant and the resources available to the applicant to meet his higher education costs;

(3) report annually to the Governor and the Legislature on the performance of its duties in accordance with the provisions of this act;

(4) solicit and raise private funds to finance the New Jersey World Trade Center Scholarship Program; and

(5) receive and disburse such contributions to the fund as may be forthcoming from private and public sources.

C.18A:71B-23.5 Awarding of scholarships.

5. a. The board is hereby authorized to award scholarships from the fund for the costs of undergraduate study at an institution of higher education to the dependent children or surviving spouses of persons who were New Jersey residents on September 11, 2001 and who were killed in the terrorist attack on the United States on September 11, 2001, or who died as a result of injuries received in the attack, or who are missing and officially presumed dead as a direct result of the attack. The terrorist attack on the United States shall include the hijackings of American Airlines Flight 11, American Airlines Flight 77, United Airlines Flight 93 and United Airlines Flight 175 and the subsequent crashes at the World Trade Center in New York City, the Pentagon in Washington, D.C. and in Somerset County, Pennsylvania.

b. Scholarships from the fund may be awarded annually upon proper application to the fund to any student who qualifies under the criteria developed by the board.

C.18A:71B-23.6 Conditions for awarding of scholarship.

6. a. A New Jersey World Trade Center scholarship shall not be awarded to an applicant unless the applicant has demonstrated to the satisfaction of the board that the applicant:

(1) will be or is enrolled in a full-time undergraduate program of study leading to a degree at an institution of higher education; and

(2) has complied with all rules and regulations adopted pursuant to this act for the award, regulation and administration of scholarships from the fund.

b. Eligibility for a scholarship, in the case of a surviving spouse, shall be limited to a period of eight years from the date of death of the person for initial receipt of the benefits under the program. In the case of a dependent child, eligibility shall be limited to a period of eight years following graduation from high school.

C.18A:71B-23.7 Rules, regulations.

7. The Higher Education Student Assistance Authority shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary for the administration of this act.

8. There shall be appropriated from the General Fund to the Higher Education Student Assistance Authority for deposit in the New Jersey World Trade Center Scholarship Fund \$250,000 to effectuate the provisions of this act.

9. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 443

AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979, c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New Jersey Statutes.

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

1. An additional chapter 16, Bias Crimes, is added to Title 2C of the New Jersey Statutes as follows:

Bias intimidation.

2C:16-1. Bias Intimidation.

a. Bias Intimidation. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or N.J.S.2C:39-5,

(1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

(3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, handicap, sexual orientation, or ethnicity.

b. Permissive inference concerning selection of targeted person or property. Proof that the target of the underlying offense was selected by

the defendant, or by another acting in concert with the defendant, because of race, color, religion, gender, handicap, sexual orientation, or ethnicity shall give rise to a permissive inference by the trier of fact that the defendant acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

c. Grading. Bias intimidation is a crime of the fourth degree if the underlying offense referred to in subsection a. is a disorderly persons offense or petty disorderly persons offense. Otherwise, bias intimidation is a crime one degree higher than the most serious underlying crime referred to in subsection a., except that where the underlying crime is a crime of the first degree, bias intimidation is a first-degree crime and the defendant upon conviction thereof may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 15 years and 30 years, with a presumptive term of 20 years

d. Gender exemption in sexual offense prosecutions. It shall not be a violation of subsection a. if the underlying criminal offense is a violation of chapter 14 of Title 2C of the New Jersey Statutes and the circumstance specified in paragraph (1), (2) or (3) of subsection a. of this section is based solely upon the gender of the victim.

e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction for bias intimidation shall not merge with a conviction of any of the underlying offenses referred to in subsection a. of this section, nor shall any conviction for such underlying offense merge with a conviction for bias intimidation. The court shall impose separate sentences upon a conviction for bias intimidation and a conviction of any underlying offense.

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

Assault.

2C:12-1. Assault. a. Simple assault. A person is guilty of assault if he:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

- b. Aggravated assault. A person is guilty of aggravated assault if he:
- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or
 - (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
 - (3) Recklessly causes bodily injury to another with a deadly weapon; or
 - (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or
 - (5) Commits a simple assault as defined in subsection a. (1), (2) or (3) of this section upon:
 - (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority or because of his status as a law enforcement officer; or
 - (b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or
 - (c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or
 - (d) Any school board member, school administrator, teacher, school bus driver or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board or any school bus driver employed by an operator under contract to a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a school bus driver; or
 - (e) Any employee of the Division of Youth and Family Services while clearly identifiable as being engaged in the performance of his duties or because of his status as an employee of the division; or
 - (f) Any justice of the Supreme Court, judge of the Superior Court, judge of the Tax Court or municipal judge while clearly identifiable as being engaged in the performance of judicial duties or because of his status as a member of the judiciary; or
 - (g) Any operator of a motorbus or the operator's supervisor or any employee of a rail passenger service while clearly identifiable as being engaged in the performance of his duties or because of his status as an

operator of a motorbus or as the operator's supervisor or as an employee of a rail passenger service; or

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily injury to another person; or

(7) Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury; or

(8) Causes bodily injury by knowingly or purposely starting a fire or causing an explosion in violation of N.J.S.2C:17-1 which results in bodily injury to any emergency services personnel involved in fire suppression activities, rendering emergency medical services resulting from the fire or explosion or rescue operations, or rendering any necessary assistance at the scene of the fire or explosion, including any bodily injury sustained while responding to the scene of a reported fire or explosion. For purposes of this subsection, "emergency services personnel" shall include, but not be limited to, any paid or volunteer fireman, any person engaged in emergency first-aid or medical services and any law enforcement officer. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this paragraph upon proof of a violation of N.J.S.2C:17-1 which resulted in bodily injury to any emergency services personnel; or

(9) Knowingly, under circumstances manifesting extreme indifference to the value of human life, points or displays a firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer; or

(10) Knowingly points, displays or uses an imitation firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose; or

(11) Uses or activates a laser sighting system or device, or a system or device which, in the manner used, would cause a reasonable person to believe that it is a laser sighting system or device, against a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. As used in this paragraph, "laser sighting system or device" means any system or device that is integrated

with or affixed to a firearm and emits a laser light beam that is used to assist in the sight alignment or aiming of the firearm.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2), b. (7), b. (9) and b. (10) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree. Aggravated assault under subsection b.(8) is a crime of the third degree if the victim suffers bodily injury; if the victim suffers significant bodily injury or serious bodily injury it is a crime of the second degree. Aggravated assault under subsection b.(11) is a crime of the third degree.

c. (1) A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

(2) Assault by auto or vessel is a crime of the third degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results and is a crime of the fourth degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

(3) Assault by auto or vessel is a crime of the second degree if serious bodily injury results from the defendant operating the auto or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

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

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

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

Assault by auto or vessel is a crime of the third degree if bodily injury results from the defendant operating auto or vessel in violation of this paragraph.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or

school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under subparagraph (a) of paragraph (3) of this section.

It shall be no defense to a prosecution for a violation of subparagraph (a) or (b) of paragraph (3) of this subsection that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be a defense to a prosecution under subparagraph (a) or (b) of paragraph (3) of this subsection that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. (Deleted by amendment P.L.2001, c.443).

3. N.J.S.2C:33-4 is amended to read as follows:

Harassment.

2C:33-4. Harassment.

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read as follows:

C.2C:39-4.1 Weapons; controlled dangerous substances and other offenses, penalties.

2C:39-4.1. Weapons; controlled dangerous substances and other offenses, penalties.

1. a. Any person who has in his possession any firearm while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

b. Any person who has in his possession any weapon, except a firearm, with a purpose to use such weapon unlawfully against the person or property of another, while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

c. Any person who has in his possession any weapon, except a firearm, under circumstances not manifestly appropriate for such lawful uses as the weapon may have, while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction arising under this section shall not merge with a conviction for a violation of any of the sections of chapter 35 or chapter 16 referred to in this section nor shall any conviction under those sections merge with a conviction under this section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other provision of law, the sentence imposed upon a violation of this section shall be ordered to be served consecutively to that imposed for any conviction for a violation of any of the sections of chapter 35 or chapter 16 referred to in this section or a conviction for conspiracy or attempt to violate any of those sections.

e. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation of N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

f. Nothing herein shall prevent the court from also imposing enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of P.L.1997, c.117 (C.2C:43-7.2), or any other provision of law, or an extended term.

5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as follows:

C.2C:39-7 Certain persons not to have weapons.

6. Certain Persons Not to Have Weapons.

a. Except as provided in subsection b. of this section, any person, having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree.

b. A person having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person having been convicted of a crime pursuant to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or controls a firearm is guilty of a crime of the second degree and upon conviction thereof, the person shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term, which shall be fixed at five years, during which the defendant shall be ineligible for parole. If the defendant is sentenced to an extended term of

imprisonment pursuant to N.J.S. 2C:43-7, the extended term of imprisonment shall include the imposition of a minimum term, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

c. Whenever any person shall have been convicted in another state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, in a court of competent jurisdiction, of a crime which in said other jurisdiction or country is comparable to one of the crimes enumerated in subsection a. or b. of this section, then that person shall be subject to the provisions of this section.

6. N.J.S.2C:43-7 is amended to read as follows:

Sentence of imprisonment for crime; extended terms.

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced, and in the cases designated in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997, c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall be sentenced, to an extended term of imprisonment, as follows:

(1) In case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1; or aggravated sexual assault if the person is eligible for an extended term pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-6c. and 2C:44-3d. 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;

(6) In the case of the crime of murder, for a specific term of years which shall be fixed by the court between 35 years and life imprisonment, of which the defendant shall serve 35 years before being eligible for parole;

(7) In the case of kidnapping under paragraph (2) of subsection c. of 2C:13-1, for a specific term of years which shall be fixed by the court between 30 years and life imprisonment, of which the defendant shall serve 30 years before being eligible for parole.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f., be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

d. In the case of a person sentenced to an extended term pursuant to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall be fixed at 15 years for a crime of the first or second degree, eight years for a crime of the third degree, or five years for a crime of the fourth degree during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted of a violation of N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

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

Criteria for withholding or imposing sentence of imprisonment.

2C:44-1. Criteria for Withholding or Imposing Sentence of Imprisonment. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

(3) The risk that the defendant will commit another offense;

(4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30, or the defendant took advantage of a position of trust or confidence to commit the offense;

(5) There is a substantial likelihood that the defendant is involved in organized criminal activity;

(6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted;

(7) The defendant committed the offense pursuant to an agreement that he either pay or be paid for the commission of the offense and the pecuniary incentive was beyond that inherent in the offense itself;

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager;

(9) The need for deterring the defendant and others from violating the law;

(10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;

(11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the

defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled;

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

(1) The defendant's conduct neither caused nor threatened serious harm;

(2) The defendant did not contemplate that his conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or facilitated its commission;

(6) The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service;

(7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(8) The defendant's conduct was the result of circumstances unlikely to recur;

(9) The character and attitude of the defendant indicate that he is unlikely to commit another offense;

(10) The defendant is particularly likely to respond affirmatively to probationary treatment;

(11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents;

(12) The willingness of the defendant to cooperate with law enforcement authorities;

(13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant.

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing

parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection a., except that this subsection shall not apply if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; or eluding; or if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1.

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b., weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnapping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in paragraph (a) of this subsection to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

(d) To a term of four years for a crime of the third degree; and

(e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which he was convicted. If the court does impose sentence pursuant to this paragraph, or if the court imposes a noncustodial or probationary sentence upon conviction for a crime of the first or second degree, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph a.(2) or a.(12) and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

8. N.J.S.2C:44-3 is amended to read as follows:

Criteria for sentence of extended term of imprisonment.

2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

The court may, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime of the first, second or third degree to an extended term of imprisonment if it finds one or more of the

grounds specified in subsection a., b., c., or f. of this section. If the grounds specified in subsection d. are found, and the person is being sentenced for commission of any of the offenses enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the defendant to an extended term as required by N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the prosecutor shall not be required. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment if the grounds specified in subsection g. of this section are found. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime to an extended term of imprisonment if the grounds specified in subsection h. of this section are found. The court shall, upon application of the prosecuting attorney, sentence a person to an extended term if the imposition of such term is required pursuant to the provisions of section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be incorporated in the record.

a. The defendant has been convicted of a crime of the first, second or third degree and is a persistent offender. A persistent offender is a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced.

b. The defendant has been convicted of a crime of the first, second or third degree and is a professional criminal. A professional criminal is a person who committed a crime as part of a continuing criminal activity in concert with two or more persons, and the circumstances of the crime show he has knowingly devoted himself to criminal activity as a major source of livelihood.

c. The defendant has been convicted of a crime of the first, second or third degree and committed the crime as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value the amount of which was unrelated to the proceeds of the crime or he procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

d. Second offender with a firearm. The defendant is at least 18 years of age and has been previously convicted of any of the following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously convicted of an offense under Title 2A of the New Jersey Statutes or under any statute of

the United States or any other state which is substantially equivalent to the offenses enumerated in this subsection and he used or possessed a firearm, as defined in 2C:39-1f., in the course of committing or attempting to commit any of these crimes, including the immediate flight therefrom.

e. (Deleted by amendment, P.L.2001, c.443).

f. The defendant has been convicted of a crime under any of the following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of committing or attempting to commit the crime, including the immediate flight therefrom, the defendant used or was in possession of a stolen motor vehicle.

g. The defendant has been convicted of a crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of violence and the victim of the crime was 16 years of age or less.

For purposes of this subsection, a crime involves violence or the threat of violence if the victim sustains serious bodily injury as defined in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict serious bodily injury.

h. The crime was committed while the defendant was knowingly involved in criminal street gang related activity. A crime is committed while the defendant was involved in criminal street gang related activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang. "Criminal street gang" means three or more persons associated in fact. Individuals are associated in fact if (1) they have in common a group name or identifying sign, symbol, tattoo or other physical marking, style of dress or use of hand signs or other indicia of association or common leadership, and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed, conspired or attempted to commit, within the preceding three years, two or more offenses of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, or a violation of chapter 11, section 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes regardless of whether the prior offenses have resulted in convictions.

The court shall not impose a sentence pursuant to this subsection unless the ground therefore has been established by a preponderance of the evidence established at a hearing, which may occur at the time of sentencing. In making its finding, the court shall take judicial notice of any testimony or information adduced at the trial, plea hearing or other

court proceedings and also shall consider the presentence report and any other relevant information.

9. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 444

AN ACT appropriating \$15,000,000 from the "Garden State Green Acres Preservation Trust Fund" for the acquisition of certain lands for recreation and conservation purposes.

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

1. a. There is appropriated from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), to the Department of Environmental Protection the sum of \$15,000,000 for the purpose of providing grants to Ocean County and any appropriate municipalities to acquire, for recreation and conservation purposes, the noncontaminated portions of the Ciba Geigy tract or tracts located in Ocean County.

b. The requirements and provisions of section 23 of P.L.1999, c.152 (C.13:8C-23) shall not apply to the appropriation made pursuant to subsection a. of this section.

2. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 445

AN ACT creating a Coordinating Committee on Youth and making an appropriation.

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

1. a. There is established in the Department of State a Coordinating Committee on Youth. The committee shall have 34 members, including the following ex-officio members or designees: the Secretary of State; the Attorney General; the Executive Director of the Juvenile Justice

Commission; the Director of the Administrative Office of the Courts; the Commissioner of Human Services; the Commissioner of Education; the Commissioner of Labor; the State Treasurer; the Commissioner of Corrections; the Commissioner of Agriculture; the Commissioner of Environmental Protection; the Commissioner of Health and Senior Services; the Commissioner of Personnel; the Commissioner of Transportation; the Commissioner of Banking and Insurance; the Commissioner of Community Affairs; the Adjutant General; the Executive Director of the Commission on Higher Education and the Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission. The committee also shall consist of 15 public members, five of whom shall be appointed by the Governor, five by the President of the Senate and five by the Speaker of the General Assembly as follows: representatives of youth serving organizations; religious organizations; the corporate and business community of the State; educational organizations; the news media; the television and motion picture industries; and persons who, by training or experience, have an interest in and knowledge of the problems and perspectives of youth; provided however, no more than three members shall be selected from any of those groups.

b. The public members shall serve for terms of three years, but of the public members first appointed, five shall serve a term of three years, five shall serve a term of two years and five shall serve a term of one year. Each member shall hold office for the term of appointment and until his successor is appointed and qualified. A member appointed to fill a vacancy occurring in the membership of the board for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. All vacancies shall be filled in the same manner as the original appointment. A member may be appointed for any number of successive terms.

c. The committee shall meet and organize immediately after appointment of the members. The Secretary of State shall serve as the chairperson and the committee shall elect from its membership a vice-chairperson.

d. Public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

e. The committee shall adopt rules for the transaction of its business and shall keep a record of its business, including a record of its resolutions, transactions, findings and determinations. A majority of the members of the committee shall constitute a quorum, but a lesser number may hold a hearing.

f. The committee shall meet at least once in each quarter of the fiscal year, and as often thereafter as shall be deemed necessary by the chairperson.

g. By a two-thirds vote of the committee, a public member may be dismissed from membership for such reasons as the committee may establish, which reasons shall include lack of interest in committee duties or repeated absences from committee meetings.

h. The committee shall be administered by the Department of State. The department shall employ necessary staff to carry out the duties and functions of the committee as otherwise provided in this act or as otherwise provided by law. The committee also shall actively seek and solicit participation by the private sector in the operation and administration of its purposes and in effectuating the provisions of this act.

i. The committee shall expire on June 30, 2006; provided however, the Legislature may act to reconstitute the committee.

2. a. The committee shall have the powers and duties to:

(1) In consultation with the Juvenile Justice Commission, assess successful faith-based and nonprofit youth programs that currently exist, and encourage the replication of these model programs, and others that are based on non-violent resistance techniques, rehabilitation and restorative justice principles, throughout the State in targeted communities with above average unemployment, substandard housing, high crime rates, above average high school dropout rates, high rates of teen pregnancy and higher than average numbers of juveniles incarcerated;

(2) Establish a Statewide Corporate-Business Youth Mentor Program by exploiting and coordinating resources with other State and private youth mentoring programs and networks to enable the local business community to participate in youth mentoring, and to demonstrate the value of honest work and legitimate employment;

(3) Organize an annual Statewide conference or regional conferences to institutionalize inter-relationships among groups and experts in various disciplines, including churches and clergy from all denominations, business leaders, housing advocacy groups, employers, financial institutions, juvenile justice and education specialists, to form partnerships to ensure that all youth receive the assistance needed to grow as productive individuals;

(4) Foster the creation and publication of public service advertisements and other program materials promoting personal responsibility and an environment free of violence, vandalism and victimization and also elucidating the distinctions between fictionalized violence and actual violence;

(5) Develop model youth grants initiatives that establish, support, expand or replicate those programs that promote the principles of non-violent resistance techniques, rehabilitation and restorative justice as well as youth-based leadership initiatives with missions to promote personal responsibility and an environment free of violence, vandalism and victimization in schools and communities; and

(6) Solicit, receive, and accept appropriations, gifts or donations from public or private sources for any of the purposes of the committee under this section.

b. The committee shall submit an annual report to the Governor and the Legislature detailing its accomplishments and including any recommendations it may have for legislation to be enacted to further promote programs of non-violent resistance, rehabilitation and restorative justice and youth leadership programs that promote personal responsibility and an environment free of violence, vandalism and victimization.

c. The Attorney General shall provide legal assistance to the committee.

3. There is appropriated \$50,000 from the General Fund to the Department of State for the Coordinating Committee on Youth.

4. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 446

AN ACT creating the Youth Employment and After School Incentive Pilot Program, supplementing Title 34 of the Revised Statutes.

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

C.34:15F-12 Youth Employment and After School Incentive Pilot Program.

1. a. There is established in the Department of Labor a Youth Employment and After School Incentive Pilot Program which shall be administered by the Commissioner of Labor, pursuant to the provisions of this act. The program shall provide for employment opportunities for disadvantaged youth with private and nonprofit employers. The purpose of the program shall be to enable disadvantaged youth to acquire job knowledge and skills and an understanding of the linkage between the skills, behaviors, and attitudes necessary to function as an adult in the workplace.

As used in this act, "disadvantaged youth" means public and nonpublic school students as well as youth who are not students who reside in municipalities where both the rates of unemployment and violent crime significantly exceed the Statewide rates of unemployment and violent crime by percentages which shall be designated by the commissioner. The term shall include youth in these municipalities who are participating in a program of aftercare following their release from juvenile detention or community facilities.

b. There is established in, but not of, the Department of Labor the Disadvantaged Youth Employment Opportunities Council. The council shall consist of 15 members: the Commissioner of Labor, the Commissioner of Education, the Chief Executive Officer of the New Jersey Commerce and Economic Growth Commission, the Secretary of State and the Executive Director of the Juvenile Justice Commission, or their designees, who shall serve *ex officio* and as nonvoting members; and 10 public members appointed by the Governor, the President of the Senate and the Speaker of the General Assembly. The Governor shall appoint two religious leaders and two representatives of education organizations. The President of the Senate and the Speaker of the Assembly shall each appoint a leader of the business community, a labor leader, and a person representing organizations that have expertise serving the needs of disadvantaged youth. The public members shall serve for terms of three years, may be reappointed and may serve until a successor has been appointed. Of the public members first appointed, five shall be appointed for terms of three years, and five shall be appointed for terms of two years. A vacancy in the membership, occurring other than by expiration of a term, shall be filled in the same manner as the original appointment, but for the unexpired term only. The members shall serve without compensation, but the council may, within the limits of funds appropriated or otherwise made available to it, reimburse members for actual expenses necessarily incurred in the discharge of their official duties.

The council shall organize as soon as its members are appointed and shall select a chairman and vice-chairman from among its members and may select a secretary, who need not be a member of the council. The council shall meet monthly, and at such other times as may be necessary.

The council may employ, prescribe the duties and fix and pay the compensation of such persons it may deem necessary to carry out the duties of the council within the limits of available appropriations.

It shall be the duty of the council to:

(1) Develop a master plan to increase employment opportunities for disadvantaged youth;

(2) Enlist the commitment of the State's business leadership to provide employment opportunities for disadvantaged youth;

(3) Enlist the support of the State's key unions which operate apprenticeship and similar programs;

(4) Develop proposals for innovative efforts to assist economically disadvantaged youth to enroll in and successfully complete employment programs;

(5) Involve all sectors of the community, including high level representatives of business, youth-serving agencies, foundations, local school systems, the communications media, and the religious community in an effort to promote and coordinate employment opportunities for disadvantaged youth; and

(6) In conjunction with the Department of Labor and the Commerce and Economic Growth Commission, seek to identify and maximize any available federal funding for the purpose of enhancing employment opportunities provided under this act.

The council shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission, or agency as it may require and as may be available to it for these purposes.

The Commissioner of Labor, in consultation with the council, may promulgate rules and regulations necessary to effectuate the purposes of this act.

C.34:15F-13 Development, administration of program.

2. a. In cooperation with the Disadvantaged Youth Employment Opportunities Council established in section 1 of this act, the Commissioner of Labor shall develop and administer the employment program established under this act. The commissioner shall, to the greatest extent feasible, attempt to achieve a balance of enrolled disadvantaged youth from the northern, central, and southern parts of the State.

b. The Commissioner of Labor, in consultation with the Department of Education, the Juvenile Justice Commission, and the council shall develop procedures relating to the program referral process; establish the selection criteria for participants which shall include the identification of local disadvantaged youths assessed by local law enforcement and juvenile corrections authorities as being at risk of gang membership or involvement or reinvolvement in the criminal justice system and students who are not meeting minimal district standards of behavior and academic achievement; provide a listing of employers who have agreed to participate in the program; and establish the process which will be utilized for matching disadvantaged youth to employment opportunities that will

enhance the self-esteem and assimilation of life skills necessary for productive functioning in the school setting and society.

C.34:15F-14 Maximum hours of employment for youths.

3. a. The State's limitations on hours of employment for child labor shall govern the maximum hours of employment for youths employed through the program. For participation in the employment program, the youth shall receive from the employer compensation of not less than the minimum wage rate pursuant to section 5 of P.L.1966, c.133 (C.34:11-56a4).

b. The Commissioner of Labor, in conjunction with the council, shall endeavor to work with the Secretary of State, the Commissioner of Education, major Statewide education organizations, and nonprofit organizations providing specialized services to youth to publicize the opportunities available under the program and promote the voluntary participation therein of school districts and students.

C.34:15F-15 Plan to collect data on effectiveness of program.

4. a. The Commissioner of Labor shall implement a plan to collect data on the effectiveness of the program in meeting the needs and conditions of disadvantaged youths which place them at risk of academic or social failure or both. The plan shall include a system to track participants to determine if they successfully completed the school year and whether such students and other youth participants succeed in making productive contributions to their communities.

b. Within two years following the effective date of this act, the Commissioners of Labor and Education, in concert with the council established in section 1 of this act, shall submit to the Governor and the Legislature an evaluation of the Youth Employment and After School Incentive Pilot Program and recommendations to the Legislature that will enable them to better coordinate and improve the effectiveness of their efforts.

C.34:15F-16 Eligibility for tax credit allotments.

5. Employers participating in the employment program established under this act shall be eligible for the tax credit allotments authorized under the provisions of P.L. , c. (C.) (now pending before the Legislature as Assembly Bill No.1918 of 2000).

6. This act shall take effect on the first day of the sixth month after enactment.

Approved January 11, 2002.

CHAPTER 447

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, 2001 and regulating the disbursement thereof," approved June 30, 2000 (P.L.2000, c.53).

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.2000, c.53, there is appropriated out of the General Fund the following sum for the purpose specified:

74 DEPARTMENT OF STATE
30 Educational, Cultural and Intellectual Development
36 Higher Educational Services
2430 New Jersey Institute of Technology
GRANTS-IN-AID

82-2430 Institutional Support.	<u>\$25,000</u>
Total Appropriation, New Jersey	
Institute of Technology	<u>\$25,000</u>
Special Purpose:	
82 College Leadership New Jersey 2001 . . .	(\$25,000)

2. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 448

AN ACT reducing the tobacco products wholesale sales and use tax rate and establishing the manufacturers' wholesale price as the base upon which the tax is determined, amending P.L.1990, c.39.

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

1. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read as follows:

C.54:40B-2 Definitions.

2. As used in sections 2 through 14 and section 20 of this act:

"Consumer" means a person except a distributor, manufacturer or wholesaler who acquires a tobacco product for consumption, storage or use in this State;

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

"Distributor" means

a person engaged in the business of selling tobacco products in this State who brings, or causes to be brought into this State from without the State a tobacco product for sale within this State,

a person who makes or manufactures tobacco products in this State for sale in the State,

a person engaged in the business of selling tobacco products without this State who ships or transports tobacco products to a person in this State to be sold to a retail dealer, or

a person who receives tobacco products on which the tax has not or will not be paid by another distributor;

"Manufacturer" means a person, wherever resident or located, who manufactures or produces, or causes to be manufactured or produced, a tobacco product and sells, uses, stores or distributes the product regardless of whether it is intended for sale, use or distribution within or without this State;

"Person" means an individual, firm, corporation, copartnership, joint venture, association, receiver, trustee, guardian, executor, administrator, or any other person acting in a fiduciary capacity, or an estate, trust or group or combination acting as a unit, the State Government and any political subdivision thereof, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context;

"Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including so far as may be applicable a vessel, vehicle, airplane, train or vending machine;

"Retail dealer" means a person who is engaged in this State in the business of selling any tobacco product at retail. A person placing a tobacco product vending machine at, or on any premises shall be deemed to be a retail dealer for each vending machine;

"Sale" means any sale, transfer, exchange, barter, or gift, in any manner or by any means whatsoever;

"Tobacco product" means any product containing any tobacco for personal consumption including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and snuff, but does not include cigarette as defined in section 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.);

"Treasurer" means the State Treasurer;

"Use" means the exercise of any right or power incidental to the ownership of a tobacco product, including a sale at retail; and

"Wholesale price" means the actual price for which a manufacturer sells tobacco products to a distributor;

"Wholesaler" means a person, wherever resident or located, other than a distributor as defined herein, who:

a. purchases tobacco products from any other person who purchases from the manufacturer and who acquires tobacco products solely for the purpose of bona fide resale to retail dealers or to other persons for the purposes of resale only; or

b. services retail outlets by the maintenance of an established place of business for the purchase of tobacco products including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products.

2. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to read as follows:

C.54:40B-3 Tax of 30 percent imposed on wholesale sale, use, distribution of tobacco product.

3. a. There is imposed a tax of 30% upon the wholesale price upon the sale, use or distribution of a tobacco product within this State.

b. Unless a tobacco product has already been or will be subject to the wholesale sales tax imposed in subsection a. of this section, if a distributor or wholesaler uses a tobacco product within this State, there is imposed upon the distributor or wholesaler a compensating use tax of 30% measured by the sales price of a similar tobacco product to a distributor.

c. Unless a wholesale use tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not paid the wholesale sales tax imposed in subsection a. of this section upon a sale that is subject to the wholesale sales tax imposed in that subsection a., there is imposed upon the retail dealer or consumer chargeable for the sale a compensating use tax of 30% of the price paid or charged for the tobacco product, which shall be collected in the manner provided in subsection b. of section 5 of this act.

3. Section 4 of P.L.1990, c.39 (C.54:40B-4) is amended to read as follows:

C.54:40B-4 Payment of tax by distributor, wholesaler.

4. Every distributor or wholesaler shall be liable to pay the tax when it has sold or otherwise disposed of the tobacco product to the retail dealer or consumer. The retail dealer or consumer shall be given an invoice, receipt or other statement or memorandum stating that the tax has been paid or will be paid by the distributor or wholesaler.

The director may provide by regulation that the tax upon tobacco products, sold to a retail dealer or consumer who pays the distributor or wholesaler in installments, may be paid and the return filed on the amount of each installment.

4. Section 5 of P.L.1990, c.39 (C.54:40B-5) is amended to read as follows:

C.54:40B-5 Liability for payment of tax.

5. a. Every distributor or wholesaler required to pay the tax imposed by this act shall be personally liable for the tax imposed under this act.

b. If a distributor or wholesaler fails to pay the tax imposed by this act when required to pay the same, then in addition to all other rights, obligations and remedies provided, the compensating use tax imposed in subsection c. of section 3 shall be payable by the retail dealer or consumer directly to the director, and it shall be the duty of the retail dealer or consumer to file a return, on a form prescribed by the director, with the director and to pay the tax to the director within 20 days of the date the tax was required to be paid or at other times as specified by the director.

5. Section 6 of P.L.1990, c.39 (C.54:40B-6) is amended to read as follows:

C.54:40B-6 Filing of certificate of registration, issuance of certificate of authority.

6. Within 15 days from the effective date of this act, or in the case of distributors or wholesalers commencing business or opening new places of business after that date, within three days after the commencement or opening, every distributor or wholesaler required to pay the taxes imposed by this act shall file with the director a certificate of registration in a form prescribed by the director unless a certificate of authority has been previously issued to any distributor or wholesaler. The director shall issue, without charge, to each

registrant a certificate of authority requiring the registrant to pay the tax and a duplicate thereof for each additional place of business of the registrant. Each certificate or duplicate shall state the place of business to which it is applicable. The certificate of authority shall be prominently displayed in the place of business of the registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered to the director immediately upon the registrant's ceasing to do business at the place named.

6. Section 7 of P.L.1990, c.39 (C.54:40B-7) is amended to read as follows:

C.54:40B-7 Records of charges, amounts to be kept by distributor, wholesaler.

7. Every distributor or wholesaler required to pay any tax imposed by this act shall keep records of every charge for and of all amounts of wholesale price paid or due thereon and of the tax payable thereon, in such form as the director may require. Records shall include a true copy of each invoice, receipt, statement or memorandum upon which the provisions of section 4 of this act require that the tax paid be stated. Records shall be available for inspection and examination at any time upon demand by the director or duly authorized agent or employee and shall be preserved for a period of three years, except that the director may consent to their destruction within that period or may require that they be kept longer.

7. Section 8 of P.L.1990, c.39 (C.54:40B-8) is amended to read as follows:

C.54:40B-8 Contents of return.

8. a. Every distributor or wholesaler required to pay tax under this act shall on or before August 20, 1990, and on or before the 20th day of each month thereafter, make and file a return for the preceding month with the director. The return shall show the total amount of wholesale price paid for sales to the distributor or wholesaler for tobacco products that are payable during the period and the amount of taxes required to be paid with respect to such amount. The return shall also reflect any use tax due.

b. The director may permit or require returns to be made covering other periods and upon such dates as the director may specify. In addition, the director may require payments of tax liability at such intervals and based upon such classifications as the director may designate. In prescribing other periods to be covered

by the return or intervals or classifications for payment of tax liability, the director may take into account the dollar volume of tax involved as well as the need for ensuring the prompt and orderly collection of the taxes imposed.

c. The form of returns shall be prescribed by the director and shall contain such information as the director may deem necessary for the proper administration of this act. The director may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

8. Section 9 of P.L.1990, c.39 (C.54:40B-9) is amended to read as follows:

C.54:40B-9 Payment of taxes; bond; security.

9. Every distributor or wholesaler required to file a return under this act shall, at the time of filing the return, pay to the director the taxes imposed by this act. Taxes for the period for which a return is required to be filed or for a lesser interval as shall have been designated by the director, shall be due and payable to the director on the date limited for the filing of the return for the period, or on the date limited for such lesser interval as the director has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the total amount of the wholesale price paid for sales to the distributor or wholesaler for tobacco products that are taxable during the period or the taxes due thereon. If the director deems it necessary to protect the revenues to be obtained under this act, the director may require a distributor or wholesaler required to pay the tax imposed by this act to file with the director a bond, issued by a surety company authorized to transact business in this State as to solvency and responsibility, in an amount as the director may fix, to secure the payment of any tax or penalties or interest due or which may become due from the distributor or wholesaler under this act. If the director determines that a distributor or wholesaler is to file a bond, the director shall give notice to the distributor or wholesaler to that effect specifying the amount of the bond required. The distributor or wholesaler shall file the bond within five days after the giving of notice unless within the five days the distributor or wholesaler requests in writing a hearing before the director at which the necessity, propriety and amount of the bond shall be determined by the director. The determination shall be final and shall be complied with within 15 days after the giving of notice thereof. In lieu of bond, securities

approved by the director or cash in an amount as the director may prescribe, may be deposited, which shall be kept in the custody of the director who may at any time without notice to the depositor apply them to any tax or interest or penalties due, and for that purpose the securities may be sold by the director at public or private sale without notice to the depositor thereof.

9. Section 10 of P.L.1990, c.39 (C.54:40B-10) is amended to read as follows:

C.54:40B-10 Estimation of taxes; notice of determination.

10. If a return required by this act is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the director from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as purchases, location, scale of charges, comparable charges, number of employees or other factors. Notice of the determination shall be given to the distributor, wholesaler, retail dealer or consumer liable for the payment of the tax. The determination shall finally and irrevocably fix the tax unless the wholesaler, distributor, retail dealer or consumer against whom it is assessed, within 30 days after the notice date of the determination, shall apply to the director for a hearing, or unless the director on the director's motion shall redetermine the same. After the hearing the director shall give notice of the determination to the wholesaler, distributor, retail dealer or consumer against whom the tax is assessed.

10. Section 12 of P.L.1990, c.39 (C.54:40B-12) is amended to read as follows:

C.54:40B-12 Powers of director.

12. In addition to the powers granted in this act, the director may:

a. Make, adopt and amend rules and regulations appropriate to the carrying out of this act.

b. Extend, for cause shown by general regulation or individual authorization, the time of filing any return for a period not exceeding three months on such terms and conditions as the director may require; and for cause shown, remit penalties and interest as provided for in the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

c. Delegate functions and powers to any officer or employee of the division, and such of the director's powers as the director may deem necessary to carry out efficiently the provisions of this act, and

the person or persons to whom such power has been delegated shall possess and may exercise all of the power and perform all of the duties as delegated.

d. Require any distributor or wholesaler required to pay tax to keep detailed records of all amounts of wholesale prices paid for the tobacco products on which taxes are payable, and names and addresses of wholesalers, distributors, retail dealers and consumers, and other facts relevant in determining the amount of tax due and to furnish such information upon request to the director.

e. Assess, determine, revise and readjust the taxes imposed by this act.

f. Enter into agreements with other states and the District of Columbia, providing for the reciprocal enforcement of similar tax laws imposed by the states entering into such an agreement. The agreement may empower the duly authorized officer of any contracting state, which extends like authority to officers or employees of this State, to sue for the collection of that state's taxes in the courts of this State.

11. This act shall take effect on the first day of the second month beginning after enactment and shall apply to tobacco products sold or otherwise disposed of on and after that date, except for those tobacco products for which the tax was paid prior to the effective date

Approved January 11, 2002.

CHAPTER 449

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

67 DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

80 Special Government Services

83 Services to Veterans

3610 Veterans' Program Support

CAPITAL CONSTRUCTION

50-3610 Veterans' Outreach and Assistance \$1,000,000

Total Capital Construction Appropriation,
Veterans' Program Support \$1,000,000

Capital Project:

50 New Jersey World War II Veterans
Memorial (\$1,000,000)

2. This act shall take effect immediately.

Approved January 11, 2002.

CHAPTER 450

AN ACT making void and unenforceable certain provisions in nursing home and assisted living facility admission agreements and supplementing Title 2A of the New Jersey Statute.

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

C.30:13-8.1 Clauses waiving right to sue in nursing home admission agreements void, unenforceable.

1. Any provision or clause waiving or limiting the right to sue for negligence or malpractice in any admission agreement or contract between a patient and a nursing home or assisted living facility licensed by the Department of Health and Senior Services pursuant to the provisions of P.L.1971, c.136 (C.26:2H-1 et seq.), whether executed prior to, on or after the effective date of this act, is hereby declared to be void as against public policy and wholly unenforceable, and shall not constitute a defense in any action, suit or proceeding.

2. This act shall take effect immediately.

Approved January 12, 2002.

CHAPTER 451

AN ACT authorizing reciprocal agreements with other states for certain temporary disability benefits.

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

C.43:21-45.1 Reciprocal agreements for certain temporary disability benefits.

1. a. The Commissioner of Labor is authorized to enter into a reciprocal agreement with the department of labor, or other corresponding agency, of any other state for the purpose of granting individuals residing in New Jersey eligibility for the award of benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), based wholly or in part upon employment in the other state, and granting individuals residing in the other state eligibility for the award of corresponding disability benefits under the statutory authority of that other state, based wholly or in part upon employment in this State.

b. Notwithstanding any other provision of law, if the Commissioner of Labor has entered into a reciprocal agreement with another state pursuant to subsection a. of this section, the commissioner is authorized to determine the amount of benefits to be paid to an individual, in accordance with the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), based wholly or in part upon the individual's employment in the other state.

2. This act shall take effect immediately.

Approved January 14, 2002.

CHAPTER 452

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, 2002 and regulating the disbursement thereof," approved June 29, 2001 (P.L.2001, c.130).

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.2001, c.130, there is appropriated out of the General Fund the following sum for the purpose specified:

34 DEPARTMENT OF EDUCATION
30 Educational, Cultural and Intellectual Development
31 Direct Educational Services and Assistance
STATE AID

03-5120 Miscellaneous Grants-In-Aid	<u>\$30,000</u>
Total State Aid Appropriation,	
Direct Educational Services and Assistance.	<u>\$30,000</u>
<i>State Aid:</i>	
03 Community Relations Committee of the United Jewish Federation of Metrowest	(\$30,000)

2. This act shall take effect July 1, 2001.

Approved January 14, 2002.

CHAPTER 453

AN ACT concerning persons with disabilities in emergency situations and supplementing chapter 27D of Title 52 of the Revised Statutes.

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

C.52:27D-25hh Emblem on residential dwelling to identify persons with disabilities.

1. a. The Director of the Division of Fire Safety in the Department of Community Affairs shall issue a person with a disability identification emblem upon the proper application therefor by a qualified person with a disability. The emblem, when affixed to the window of a residential dwelling, shall serve to alert firefighters, medical, rescue or law enforcement personnel, when responding to an emergency situation, that a person with a disability may be present therein and may require special assistance. The director, in consultation with appropriate State agencies and organizations representing individuals with disabilities, shall determine the design and size of the emblem and the location and manner in which it shall be affixed to the dwelling. The director shall promulgate rules and

regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act.

b. A person with a disability may apply for an emblem to the Director of the Division of Fire Safety. After due investigation of the qualifying status of each applicant, the director shall issue the emblem. An emblem issued pursuant to this section shall be nontransferable and shall be removed from a dwelling when a qualified person with a disability no longer resides in that dwelling.

As used in this section, "person with a disability" means a person who is severely and permanently disabled and cannot ambulate without the use of assistive devices, such as a cane, crutch, wheelchair, prosthetic device or other person, or someone who suffers from lung disease or uses portable oxygen, or someone who has a cardiac condition to the extent that the person's functional limitations are classified in severity as a class III or class IV, according to the American Heart Association, or someone who is deaf or hard of hearing, or an individual who has permanent sight impairment in both eyes as certified by the New Jersey Commission for the Blind or whose ability to walk is severely and permanently limited due to an arthritic, neurological, or orthopedic condition. The disability must be certified by a licensed medical doctor, podiatrist or physician licensed to practice in New Jersey or a bordering state.

2. This act shall take effect on the 180th day following the date of enactment.

Approved January 14, 2002.

CHAPTER 454

AN ACT concerning pension funds of certain boards of education in first-class counties and amending and supplementing chapter 66 of Title 18A of the New Jersey Statutes.

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

1. N.J.S.18A:66-97 is amended to read as follows:

Board of trustees, membership, terms, vacancies.

18A:66-97. Any pension fund created or to be created as provided in this article shall be under the control and management of the board of

seven trustees, no more than three of whom shall be employees of the same board of education. The two trustees of the board added pursuant to this act, P.L.2001, c.454, shall be retirees of the pension fund elected by the retirees of the pension fund, and each such member shall serve for a term of two years. The first board selected as provided in section 18A:66-96 shall serve until the month of January following the incorporation of such association. At such time four members of the association shall be elected as trustees, in place of the four first selected, by a majority vote of the members of the association as follows: one for the term of one year, one for the term of two years, one for the term of three years, and one for the term of four years, who shall serve for the respective terms for which they are each chosen. Thereafter in the month of January of each year a member shall be chosen for a full term of four years to serve in place of the trustee whose term shall have expired.

Any vacancy occurring among the board of trustees or in the office of chairman, secretary, treasurer, or other officers of such corporation shall be filled in the manner provided in bylaws, and in the absence of such provision shall be filled by the board of trustees.

2. N.J.S.18A:66-106 is amended to read as follows:

Credit purchase for employment in other governmental units in this or other states; certain leaves of absence.

18A:66-106. a. Persons heretofore permanently or provisionally employed by such boards of education who became members of the pension fund at any time prior to June 26, 1962, shall be permitted to purchase credit covering any period of temporary, permanent or provisional service preceding said permanent or provisional employment, by making application therefor, and in such case, the payments to be made by the employee and board of education for such previous service shall be based on appropriate tables of factors submitted by the actuary as being applicable to the salary and contribution rate in effect at the time of making the application to purchase such credit. Persons becoming members thereafter shall be permitted to purchase credit for any temporary service which immediately precedes their permanent or provisional appointment by making application therefor at the time of becoming members and paying into the fund, the amount determined to be due for such service on the basis of appropriate tables of factors submitted by the actuary as being applicable to the salary and contribution rate in effect based on the salary at that time.

Any person coming into the employ of any such board of education as a provisional employee after June 26, 1962, shall become a member of the pension fund as a condition of employment.

A member shall have the right to purchase credit for any period of service in other municipalities or governmental units in this State or in any other State of the United States of America, rendered by the member prior to becoming a member up to the nearest number of years and months but not exceeding 10 years, by making application therefor at the time of becoming a member or for present members within two years of the effective date of this 1968 amendatory act and in such case the payments to be made by the employee and the employing board of education for such service credits shall be on the basis of appropriate tables of factors submitted by the actuary as being applicable to the salary and contribution rate in effect based on the salary at the time of making application.

b. For a period of two years after the effective date of this act, (P.L.1995, c.240), any member who meets the definition of "veteran" as set forth in N.J.S.18A:66-104 may, upon filing an application with the board of trustees of the pension fund, purchase credit for up to five years of military service in the Armed Forces of the United States prior to his enrollment in the retirement system. The member may purchase credit for the service by paying into the pension fund the amount required by applying the factor, supplied by the actuary as being applicable to the member's age at the time of the purchase, to the member's salary at that time or to the highest annual compensation for service in the school district for which contributions were made during any prior fiscal year of membership, whichever is greater. Any member electing to purchase this service credit who retires prior to completing payment shall receive credit only for the service purchased, unless at the time of retirement the member makes a lump sum payment necessary to purchase full credit.

c. After the effective date of this act, P.L.2001, c.454, a member of the pension fund may, upon filing an application with the board of trustees of the pension fund, purchase credit for the types of prior service described in subsection a. of this section, or for time during which the member shall have been absent on an official leave without pay. Credit for an official leave without pay shall be purchased for a period of time equal to: (1) three months or the duration of the leave, whichever is less; or (2) if the leave was due to the member's personal illness, including maternity leave and child care, two years or the duration of the leave, whichever is less. The member may purchase credit by paying into the pension fund the amount required by applying the factor, supplied by the actuary as being applicable at the time of the purchase, to the member's

salary at that time. Any member electing to purchase this service credit who retires prior to completing payment shall receive credit only for the service purchased, unless at the time of retirement the member makes a lump sum payment necessary to purchase full credit.

3. N.J.S.18A:66-110 is amended to read as follows:

Manner of payment.

18A:66-110. Pensions shall be paid from the fund in the manner following:

a. A member of the pension fund who was a member on or before June 26, 1962 and who has or shall hereafter have credit in the pension fund for 30 years or more as an employee of a board of education in a county wherein the fund has been established and maintained shall, upon application to the board of trustees of the pension fund, be retired by such board of trustees and shall thereupon receive annually from the fund, for and during the remainder of his or her life, by way of pension, an amount equal to one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years for which he or she has credit in the pension fund, the amount to be determined by resolution of the board.

b. Upon the retirement of a member who has reached the age of 60 years, the person so retired shall be entitled to receive during his or her life, by way of pension, one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years for which he or she has credit in the pension fund, the amount to be determined by resolution of the board. Upon the receipt of proper proof of death of a member who has retired on a service retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate an amount equal to one-half of the highest annual compensation received by the member in any year of creditable service.

c. A member of the fund who has credit therein for 10 years, who shall become incapacitated, either mentally or physically, and who cannot perform the regular duties of employment, or who is found unfit for the performance of his or her duties, upon the application of his employer or upon his own application or the application of someone acting in his behalf, shall be retired by the board of trustees of the pension fund and thereupon shall receive annually from the fund a retirement allowance as described in subsection b. of this section if he has reached or passed age

60 and if he is under age 60, an amount equal to nine-tenths of one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years of creditable service; provided, however, that in no event shall the pension be based upon less than 17 years nor more than 30 years of service unless the member would have had less than 17 years of service at age 60, in which event he shall be given credit for the years to age 60; however, a member who has not attained age 70 who shall become incapacitated, either mentally or physically, as a direct result of a traumatic event occurring in the performance of his or her duties of such employee, shall, upon the application of his employer or upon his own application or the application of someone acting in his behalf, be retired by the board of trustees of the pension fund, and, thereupon, if a report of the accident, in a form acceptable to the board of trustees of the pension fund, is filed with the said board of trustees within 60 days next following the accident and the application for retirement is filed with the said board of trustees within two years of the date of the accident, shall receive annually from the fund an amount equal to two-thirds of the annual salary being received by such employee on the date of the accident. The board of trustees may waive strict compliance with the time limits within which a report of the accident and an application for retirement must be filed with the board if it is satisfied: (1) that a report of the accident from which the disability is claimed to have resulted was filed with the employing board of education with reasonable promptitude and in no event later than 60 days after the accident, and (2) the applicant shall show that his failure to file a report with the board of trustees or to file his application for retirement within the time limited by law was due to mistake, inadvertence, ignorance of fact or law, inability, or to the fraud, misrepresentation or deceit of any person, or to a delay in the manifestation of the incapacity, or to any other reasonable cause or excuse, and (3) that the application for retirement was filed in good faith and the circumstances justify its favorable consideration.

The trustees of the pension fund shall have the power to determine whether or not any employee is permanently and totally disabled, and whether or not a disability of an employee is the direct result of a traumatic event occurring at some definite time and place in the performance of his or her duties as such employee. The claimant shall have the right to present physicians, witnesses or other testimony in his or her behalf before the board of trustees. The chairman, or any other member of the board of trustees, may administer oaths to any physician or other persons called before the trustees regarding the employee's disability. The

board of trustees shall decide, by resolution, whether the applicant is entitled to the benefit of this article.

Permanent and total disability resulting from a cardiovascular, pulmonary or muscular-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.

Once in each year, the board of trustees may, and upon the member's application shall, require any member retired for a disability, who is under the age of 60, to undergo medical examination by a physician or physicians designated by the board of trustees. The examination shall be made at the residence of the pensioner or any other place mutually agreed upon. If the physician or physicians thereupon report and certify to the board of trustees that the disabled pensioner is not permanently and totally incapacitated, either mentally or physically, for the performance of duty, and the board finds that said member is engaged in a gainful occupation, or could be engaged in a gainful occupation, and if the board concurs in the report, then the amount of the pension shall be reduced to an amount which, when added to the amount then being earned by him or her or an amount which he or she could earn if gainfully employed, shall not exceed the amount of compensation received by him or her at the time of his or her retirement, including any cost of living adjustment. If subsequent examination of such pensioner shows that his or her earnings have changed since the date of his or her last examination, then the amount of the pension shall be further altered, but the new pension shall not exceed the amount of the pension originally granted, nor shall the new pension, when added to the amount then being earned by the pensioner, exceed the salary or compensation received by him or her at the time of his or her retirement, including any cost of living adjustment.

d. At the time of retirement, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or he or she may, on retirement, elect to convert the benefits, otherwise payable to him or her, into a retirement allowance of the equivalent actuarial value computed on the basis of such mortality tables as shall be adopted by the board of trustees, in accordance with one of the optional forms following:

Option 1. A reduced retirement allowance, payable during life, with a provision that in the case of death, before the total pension payments have equaled the actuarial value computed as aforesaid, the balance shall be paid to his or her surviving designated beneficiary, duly acknowledged and filed with the board of trustees; and if none, then to the executor or administrator of his or her estate.

Option 2. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death it will continue

during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 3. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death, an allowance at one-half of the rate of his or her reduced allowance will be continued during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 4. A reduced retirement allowance, payable during the retired member's life, with some other benefit payable after his or her death, provided the benefit is approved by the board of trustees.

Option 5. Some other benefit, which is equivalent to the full amount, three-quarters, one-half or one-quarter of the member's retirement allowance, shall be paid upon the member's death to the beneficiary designated by the member, and if that beneficiary dies before the member, the member's retirement allowance shall increase to the maximum retirement allowance for the member's lifetime, provided that such other benefit together with the member's lesser and maximum retirement allowances shall be certified by the actuary to be of equivalent actuarial value.

No optional selection shall be effective in case a member dies within 30 days after retirement and such a member shall be considered an active member at the time of death until the first payment on account of any benefit becomes normally due.

The board of trustees shall, from time to time and as often as they deem it necessary, employ an actuary, who shall recommend, and the board shall keep in convenient form, such data as shall be necessary for actuarial valuations of the various funds created by this article. At least once in every five-year period, or more frequently as determined by the board of trustees, the actuary shall make an actuarial investigation into the mortality, service and salary experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the various funds thereof, and upon the basis of such investigation the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary.

(b) Certify the rate of contribution which shall be made by each board of education to the pension fund as provided by this article.

C.18A:66-110.2 Increase in certain retirement benefits.

4. a. The retirement allowance of each retiree under N.J.S.18A:66-110, N.J.S.18A:66-113 and section 4 of P.L.1971, c.382 (C.18A:66-113.1), who retired before January 1, 1995, or of the retiree's beneficiary

pursuant to N.J.S.18A:66-110, on the effective date of this act, P.L.2001, c.454, shall be increased by 33.3%.

b. The retirement allowance of each retiree under N.J.S.18A:66-110, N.J.S.18A:66-113 and section 4 of P.L.1971, c.382 (C.18A:66-113.1), who retired on or after January 1, 1995 and before January 10, 2000, or of the retiree's beneficiary pursuant to N.J.S.18A:66-110, on the effective date of this act, P.L.2001, c.454 (C.18A:66-110.2 et al.), shall be increased by 11.1%.

c. The pension fund shall be liable for any increased cost to an employer under section 6 of P.L.1971, c.278 (C.18A:66-126.6) as a result of this section.

d. A person who is eligible to receive an increased retirement allowance under this section may, at any time, waive his or her right thereto by filing a written notice of waiver with the secretary of the pension fund. The application for the waiver of all or part of the increase shall be made by the retiree at least 30 days prior to the desired effective date on a form satisfactory to the pension fund and shall be effective on the first day of the following month. Such waiver may be withdrawn at any time and upon such withdrawal the increase in the retirement allowance shall commence with the retirement allowance payment for the next following month.

5. This act shall take effect immediately.

Approved January 14, 2002.

CHAPTER 455

AN ACT concerning the Domestic Security Preparedness Task Force and amending P.L.2001, c.246.

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

1. Section 15 of P.L.2001, c.246 (C.App.A:9-77) is amended to read as follows:

C.App.A:9-77 Effective date, continuance of task force.

15. This act shall take effect immediately; provided, however, that on the first day of the 65th month following enactment the Governor shall give notice to the Legislature to review the conduct and performance of

the Domestic Security Preparedness Task Force. If within 60 days of the receipt of that notice the Legislature fails to adopt, by a two-thirds majority of each House, a joint resolution finding that the task force as formulated under this act has either failed to adequately perform its duties pursuant to this act or that the task force is no longer necessary to preserve, protect and sustain the domestic security and preparedness and, therefore shall be dissolved, the task force shall continue.

2. This act shall take effect immediately.

Approved January 14, 2002.

CHAPTER 456

AN ACT concerning the membership of the New Jersey Sports and Exposition Authority and amending P.L.1971, c.137.

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

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

C.5:10-4 "New Jersey Sports and Exposition Authority"; membership.

4. a. There is hereby established in the Department of Community Affairs a public body corporate and politic, with corporate succession, to be known as the "New Jersey Sports and Exposition Authority." The authority is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by the act shall be deemed and held to be an essential governmental function of the State and the application of the revenue derived from the projects to the purposes provided in this act shall be deemed and held to be applied in support of government.

b. The authority shall consist of the State Treasurer, the President of the New Jersey Sports and Exposition Authority, and a member of the Hackensack Meadowlands Development Commission, to be appointed by the Governor, who shall be members *ex officio*, and 11 members appointed by the Governor with the advice and consent of the Senate for terms of four years, provided that the members of the authority (other than the *ex officio* members) first appointed by the Governor shall serve for terms of one year, two years, three years and four years, respectively. Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. A member shall

be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

c. Each appointed member may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing. Each member before entering upon his duties shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

d. The chairman shall be appointed by the Governor from the members of the authority other than ex officio members, and the members of the authority shall elect one of their number as vice chairman thereof. The authority shall elect a secretary and a treasurer, who need not be members, and the same person may be elected to serve both as secretary and treasurer. The powers of the authority shall be vested in the members thereof in office from time to time and eight members 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 thereof by the affirmative vote of at least eight members of the authority. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the authority.

e. Each member and the treasurer of the authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member or treasurer, as the case may be, in such form and amount as may be prescribed by the Director of the Division of Budget and Accounting in the Department of the Treasury. Such bonds shall be filed in the office of the Secretary of State. At all times thereafter the members and treasurer of the authority shall maintain such bonds in full force and effect. All costs of such bonds shall be borne by the authority.

f. The members of the authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no officer or employee of the State shall be deemed to have forfeited or shall forfeit his office or employment or any benefits or emoluments thereof by reason of his acceptance of the office of ex officio member of the authority or his services therein.

g. Each ex officio member of the authority may designate an officer or employee of his department or agency to represent him at meetings of the authority, and each such designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any such

designation shall be in writing delivered to the authority and shall continue in effect until revoked or amended by writing delivered to the authority.

h. The authority may be dissolved by act of the Legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority all property, funds and assets thereof shall be vested in the State.

i. A true copy of the minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at such meeting by the authority shall have force or effect until 15 days after such copy of the minutes shall have been so delivered unless during such 15-day period the Governor shall approve the same, in which case such action shall become effective upon such approval. If, in said 15-day period, the Governor returns such copy of the minutes with veto of any action taken by the authority or any member thereof at such meeting, such action shall be null and void and of no effect. The powers conferred in this subsection i. upon the Governor shall be exercised with due regard for the rights of the holders of bonds and notes of the authority at any time outstanding, and nothing in, or done pursuant to, this subsection i. shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the authority to carry out and perform in every detail each and every covenant, agreement or contract at any time made or entered into by or on behalf of the authority with respect to its bonds or notes or for the benefit, protection or security of the holders thereof.

2. This act shall take effect immediately.

Approved January 14, 2002.

CHAPTER 457

AN ACT concerning the duration of construction permits and amending and supplementing P.L.1975, c.217.

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

1. Section 13 of P.L.1975, c.217 (C.52:27D-131) is amended to read as follows:

C.52:27D-131 Construction permits; application, approval, expiration, cancellation, extension.

13. a. The enforcing agency shall examine each application for a construction permit. If the application conforms with this act, the code, and the requirements of other applicable laws and ordinances, the enforcing agency shall approve the application and shall issue a construction permit to the applicant. Every application for a construction permit shall be granted, in whole or in part, or denied within 20 business days. If application is denied in whole or in part, the enforcing agency shall set forth the reasons therefor in writing. If an enforcing agency fails to grant, in whole or in part, or deny an application for a construction permit within the period of time prescribed herein, such failure shall be deemed a denial of the application for purposes of an appeal to the construction board of appeals unless such period of time has been extended with the consent of the applicant. The enforcing agency may approve changes in plans and specifications previously approved by it, if the plans and specifications when so changed remain in conformity with law. Except as otherwise provided in this act or the code, the construction or alteration of a building or structure shall not be commenced until a construction permit has been issued. The construction of a building or structure shall be in compliance with the approved application for a construction permit; and the enforcing agency shall insure such compliance in the manner set forth in section 14 of this act.

The commissioner, after consultation with the code advisory board, may, for certain classes or types of occupancy posing special or unusual hazards to public safety, establish regulations designating the department as the enforcing agency for purposes of approving plans and specifications. A municipal enforcing agency shall not grant an occupancy permit for any such class or type of construction unless the applicant submits appropriate plans and specifications certified or approved by the department. Upon submission by an applicant of such certified approved plans and specifications, the enforcing agency shall recognize the approval when deciding whether to approve the application for a construction permit.

b. A construction permit, issued in accordance with the foregoing provisions, pursuant to which no construction has been undertaken above the foundation walls within one year from the time of issuance, shall expire.

c. The enforcing agency may revoke or cancel a construction permit in the event the project for which the permit is obtained is not completed by the third anniversary of the date of issuance of the construction permit. Notwithstanding the provisions of any other law, rule or regulation to the

contrary, the enforcing agency may revoke or cancel a construction permit in effect on the effective date of P.L.2001, c.457 (C.52:27D-131.1 et al.), if the project for which the construction permit was obtained is not completed by the third anniversary of the effective date of P.L.2001, c.457 (C.52:27D-131.1 et al.).

d. If the project for which the permit is obtained is not completed by a deadline set forth in this section, the permittee may submit a request for an extension of the permit to the enforcing agency for review. The enforcing agency may extend the permit for a period of one year. Approval of the extension shall not be unreasonably withheld. Denial of a request for an extension may be appealed to the county construction board of appeals established pursuant to section 9 of P.L.1975, c.217 (C.52:27D-127). If a project is not completed within the deadline set forth in this section, the enforcing agency shall take all appropriate action up to and including demolition of the uncompleted structure.

The provisions of this subsection shall not apply to a permit obtained: (1) to construct improvements to the interior of a residential property in which the permittee is currently residing that are not visible from the outside of the residential property, (2) for any building of which the exterior and all required site improvements have been fully constructed, or (3) for a project while that project is under the control of a mortgagee in possession.

The enforcing agency may suspend, revoke or cancel a construction permit in case of neglect or failure to comply with the provisions of this act or the code, or upon a finding by it that a false statement or representation has been made in the application for the construction permit.

C.52:27D-131.1 Removal, demolition of certain building, structure.

2. a. If the owner of a building or structure fails to comply with a removal or demolition order issued by an enforcing agency under authority of P.L.2001, c.457 (C.52:27D-131.1 et al.) or of P.L.1975, c.217 (C.52:27D-119 et seq.), the enforcing agency may cause such building or structure to be removed or demolished or may notify the governing body of the need to contract for the removal or demolition thereof in accordance with the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.). Such removal or demolition shall include the clearance, and any necessary leveling, of the site.

b. The cost of any such removal or demolition, together with the cost of filing legal papers, expert witnesses' fees, search fees and advertising charges incurred in the course of any proceeding taken under P.L.2001, c.457 (C.52:27D-131.1 et al.) or under P.L.1975, c.217 (C.52:27D-119 et seq.), less any proceeds received by the enforcing agency from the sale of

the materials of the building or structure, shall be a municipal lien against the real property upon which such cost was incurred. In the event that costs were paid by any governmental entity other than the municipality, the lien shall be assigned to that governmental entity. The lien shall be filed and shall be enforceable in the same manner as are other municipal liens.

3. This act shall take effect immediately.

Approved January 14, 2002.

JOINT RESOLUTIONS

(2503)

JOINT RESOLUTION NO. 1

A JOINT RESOLUTION designating that portion of Calhoun Street in the City of Trenton under Department of Transportation jurisdiction as the "Reverend S. Howard Woodson Way."

WHEREAS, The Reverend S. Howard Woodson was born on May 18, 1918 in Philadelphia, Pennsylvania and graduated with a bachelor's degree in divinity from Morehouse College School of Divinity in Atlanta and also attained a Sociology degree from Atlanta University; and

WHEREAS, The Reverend S. Howard Woodson began his long and distinguished public service career in 1941 when, at the age of 23, he was ordained a Baptist minister at Mt. Zion Baptist Church in Philadelphia and five years later was appointed pastor of Trenton's Shiloh Baptist Church where he served for more than 50 years; and

WHEREAS, The Reverend S. Howard Woodson in 1962 became the first black man elected to office in Trenton as Councilman to the Trenton City Council where he quickly gained recognition as the first of seven city councilmen elected to replace the city commission form of government thereby ushering in a reform era in Trenton politics; and

WHEREAS, In 1964 the Reverend S. Howard Woodson was first elected to the New Jersey General Assembly, where he later served as Minority Leader in the 1968-69 session and as Speaker in the 1974-75 session during one of the most tumultuous times in State history; and

WHEREAS, When chosen to become Assembly Speaker in 1974, the Reverend S. Howard Woodson became the first African-American to head a state legislative body anywhere in the nation; and

WHEREAS, The Reverend S. Howard Woodson's public service did not end with his departure from the legislature in 1975 after serving six terms, as he was appointed Civil Service Commissioner in the administration of Governor Byrne, and oversaw equal opportunity employment and affirmative action programs in Governor Florio's administration; and

WHEREAS, Throughout his lifetime, the Reverend S. Howard Woodson attained legendary status for his many contributions as one of the charter members of the Trenton Political Action Committee, for his service as mentor to a new generation of leaders representing the black community, and for his role in restoring peace and order during the civil unrest following the assassination of Martin Luther King, Jr., as he personally led a group of community leaders through the streets of Trenton to convince residents to return to their homes; and

WHEREAS, The Reverend S. Howard Woodson will long be remembered for his lifetime of courageous advocacy on behalf of minorities, his resonant speaking voice, his natural eloquence, his consummate diplomatic skills that allowed him to forge a consensus among many diverse interests on the social issues of his time, and his unceasing commitment to the betterment of the Trenton community and the State of New Jersey; and

WHEREAS, In tribute to the long public service of the Reverend S. Howard Woodson, who served in so many positions at the local and State levels, it is altogether fitting and proper to designate that portion of Calhoun Street in the City of Trenton, Mercer County, under the jurisdiction of the Department of Transportation, as the "Reverend S. Howard Woodson Way" in memory of his many years of distinguished service to the City of Trenton and to the State of New Jersey, and for his more than 50 years of service to Shiloh Baptist Church which originally stood on Calhoun Street prior to the completion of expanded facilities in 1972; now, therefore,

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

1. The Commissioner of Transportation shall designate that portion of Calhoun Street in the City of Trenton, Mercer County, under the jurisdiction of the Department of Transportation, as the "Reverend S. Howard Woodson Way."

2. The Commissioner of Transportation is authorized to place appropriate signs on the road designated as the "Reverend S. Howard Woodson Way."

3. This joint resolution shall take effect immediately.

Approved February 2, 2001.

JOINT RESOLUTION NO. 2

A JOINT RESOLUTION designating the month of May as "Child Appreciation Month."

WHEREAS, No segment of our society is more critical to our future than our children; and

WHEREAS, Our children are the greatest asset of this State and represent the hopes and dreams of the citizens of this State and of the United States; and

WHEREAS, Our children must be nurtured, encouraged and invested in to preserve and enhance our prosperity and democracy; and

WHEREAS, The daily demands and pressures on our children are greater than ever before due to the prevalence of drugs and violence; and

WHEREAS, It is the obligation of the parents and public policy makers of this State to support and protect the physical and mental well being of our children and to acknowledge the importance of their societal contributions; and

WHEREAS, It is appropriate to designate the month of May to recognize the importance of our children's contributions to the welfare of this State and the United States; now, therefore,

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

C.36:2-68 "Child Appreciation Month," May; designated.

1. The month of May in each year is designated as "Child Appreciation Month" in New Jersey to recognize the importance of our children's contributions to this State and to the United States and to provide an opportunity for State and local governments and the general public to join with all children, families, private organizations and churches to participate appropriately in its observance.

2. This joint resolution shall take effect immediately.

Approved April 10, 2001.

JOINT RESOLUTION NO. 3

A JOINT RESOLUTION designating the North Service Road portion of State Highway Route No. 3 in Rutherford Borough, Bergen County, as the "Thomas E. Dunn Memorial Highway."

WHEREAS, On January 4, 1994, Rutherford Borough volunteer firefighter Thomas E. Dunn perished while searching room-to-room for survivors in a 109-year-old wood-frame house when a sudden eruption of flames engulfed him; and

WHEREAS, Firefighter Dunn, encountered temperatures within the house which escalated from 100 degrees to 2,000 degrees in an instant due to the nature of the construction of the dwelling, was surrounded by the flames and could not escape the inferno; and

WHEREAS, Mr. Dunn, an employee of the U.S. Postal Service at the Bulk Mail Center of Jersey City, was a member of the Rutherford Rescue Company No. 5 for four years; and

WHEREAS, Mr. Dunn, a devoted husband and father, was noted by the Rutherford Borough Administrator as having served with the utmost distinction and professionalism; and

WHEREAS, It is most fitting and proper for this son of New Jersey to be honored for his bravery, heroism and service by the designation of the North Service Road portion of State Highway Route No. 3 in the borough of Rutherford in his name; 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 North Service Road portion of State Highway Route No. 3 in Rutherford Borough, Bergen County, as the "Thomas E. Dunn Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate and permanent route and directional signs bearing that designation, and indicating that the portion of the highway bearing that designation is located within the borough of Rutherford.

3. This joint resolution shall take effect immediately.

Approved April 20, 2001.

JOINT RESOLUTION NO. 4

A JOINT RESOLUTION designating the South Service Road portion of State Highway Route No. 3 in Rutherford Borough, Bergen County, as the "Edwin L. Ward, Sr. Memorial Highway."

WHEREAS, On July 14, 1965, Edwin L. Ward, Sr., a Rutherford Borough firefighter, drowned after he and two others were spilled into the debris-choked Passaic River when their aluminum motor boat hit a submerged object and capsized; and

WHEREAS, Firefighter Ward, a former Deputy Fire Chief and Assistant Chief of the Fire Prevention Bureau for the borough, was in the boat attempting to get a closer look at the abandoned Erie-Lackawanna Railroad Bridge which was heavily damaged by a fire in its superstructure; and

WHEREAS, Mr. Ward, who was a member of the Rescue Squad for Rutherford Fire Company No. 5 for 17 years and who served as its captain, was also an employee of the U.S. Postal Service at the Rutherford Post Office for nine years, a U.S. Marine veteran of World War II, and a borough resident for 21 years; and

WHEREAS, Mr. Ward, a devoted husband and model father, who was mentioned by former neighbors as "always interested in the community and its people," served with the utmost distinction and professionalism; and

WHEREAS, It is most fitting and proper for this son of New Jersey to be honored for his bravery, heroism and service by the designation of the South Service Road portion of State Highway Route No. 3 in the borough of Rutherford in his name; 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 South Service Road portion of State Highway Route No. 3 in Rutherford Borough, Bergen County, as the "Edwin L. Ward, Sr. Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate and permanent route and directional signs bearing that designation, and indicating that the portion of the highway bearing that designation is located within the borough of Rutherford.

3. This joint resolution shall take effect immediately.

Approved April 20, 2001.

JOINT RESOLUTION NO. 5

A JOINT RESOLUTION designating the third Thursday of October of each year as "New Jersey Credit Union Day".

WHEREAS, The credit union, as a not-for-profit member owned and controlled provider of a wide range of financial services, at rates competitive with and often better than the those of other financial institutions, has for over 150 years upheld the philosophy of "people helping people"; and

WHEREAS, The credit union movement has spread worldwide since its beginnings in Germany in 1848 and in the United States in the early 1900's; and

WHEREAS, In 1948, the Credit Union National Association established the third Thursday in October as an annual national day of observance to bring people together to reflect upon and promote the history and ideals of the credit union movement; and

WHEREAS, Today, people across the world celebrate the third Thursday of October as International Credit Union Day, with credit unions hosting special events, open houses, picnics, fairs and festivals for their members; and

WHEREAS, Over 1.1 million New Jerseyans are member-owners of the nearly 300 credit unions in this State; and

WHEREAS, It is fitting and proper to recognize and honor New Jersey's credit unions for their many years of providing outstanding financial services to New Jersey consumers; now, therefore,

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

C.36:2-69 "New Jersey Credit Union Day"; designated.

1. The third Thursday of October of each year is designated as "New Jersey Credit Union Day". The Governor shall annually issue a proclamation calling on the people of this State to observe the day with appropriate activities and programs.

2. This joint resolution shall take effect immediately.

Approved July 26, 2001.

JOINT RESOLUTION NO. 6

A JOINT RESOLUTION designating the third Monday in April of each year as "Patriots Day" in New Jersey.

WHEREAS, On April 19th, 1775 a skirmish took place near a bridge at Concord, Massachusetts; and

WHEREAS, On that day, a small band of embattled farmers, patriotic colonists inexperienced in the methods of war, fired "the shot heard round the world"; and

WHEREAS, Unbeknownst at the time, on that day the American Revolution had begun; and

WHEREAS, That struggle would last for years and would lead to the establishment of the United States and the freedoms we now enjoy; and

WHEREAS, To commemorate that event and the ensuing struggle waged by brave colonial patriots, it is appropriate to celebrate the anniversary of the event on the third Monday in April of each year; now, therefore,

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

C.36:2-70 "Patriots Day", third Monday in April; designated.

1. The third Monday in April of each year is designated as "Patriots Day" in New Jersey for the purpose of recognizing and commemorating

the day patriotic colonists fired the "shot heard around the world" and the start of the American Revolution.

C.36:2-71 Observation of "Patriots Day."

2. The people of this State and all public and private entities are urged to observe "Patriots Day" by engaging in appropriate activities that recognize and commemorate this nation's revolutionary struggle and the ideals and principles for which the American Revolution was fought.

3. This joint resolution shall take effect immediately.

Approved August 8, 2001.

JOINT RESOLUTION NO. 7

A JOINT RESOLUTION designating the interchange at Interstate Highway Route 287 and County Road 529 in South Plainfield Borough, Middlesex County, as the "James Duffy Interchange."

WHEREAS, The Korean War represents a difficult period in America's history and is known as the "Forgotten War," even though in three years over 54,246 American soldiers died, 103,284 were wounded in action and 8,177 MIAs are still unaccounted for, and the viciousness of the fighting is illustrated by the fact that 131 Congressional Medals of Honor were awarded to American combatants; and

WHEREAS, Of the 7,000 Americans taken prisoner during the 37 months of the Korean War, 51% died in prisoner of war camps, the highest percentage of any modern war; and

WHEREAS, Joint Resolution No. 3 of 1995, approved April 11, 1995, designates Interstate Highway Route 287 as the "Korean War Memorial Highway"; and

WHEREAS, Two thousand three hundred purple heart veterans reside in New Jersey which exceeds that of any other state in the nation; and

WHEREAS, Corporal James Duffy of South Plainfield served in the Korean War and later received the Purple Heart for his heroic actions there; and

WHEREAS, It is most fitting and proper for this son of New Jersey to be honored for his bravery, heroism and service during the Korean War and later receiving the Purple Heart by designating the interchange at Interstate Highway Route 287 and County Road 529 in South Plainfield Borough, Middlesex County, in his name; 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 interchange at Interstate Highway Route 287 and County Road 529 in South Plainfield Borough, Middlesex County, as the "James Duffy Interchange."

2. The Commissioner of Transportation shall place an appropriate plaque on the bridge of such interchange bearing that name.

3. This joint resolution shall take effect immediately.

Approved December 26, 2001.

JOINT RESOLUTION NO. 8

A JOINT RESOLUTION condemning the terrorist attack of September 11, 2001 and making certain recommendations to industries regulated by the Department of Banking and Insurance.

WHEREAS, The terrorist attack of September 11, 2001, perpetrated on the World Trade Center, the Pentagon and United States domestic airlines, killed thousands of innocent people from New Jersey, New York, Washington D.C. and elsewhere, and caused untold suffering in injuries to survivors, loss of loved ones, widespread trauma, and substantial economic losses and disruption; and

WHEREAS, The Senate and General Assembly condemn, in the strongest terms, these despicable, violent and abhorrent acts; and

WHEREAS, It is in the interest of all to begin on the road to healing by caring for those who have been injured, by rebuilding the infrastructure, and by restoring the economic system to normal and vigorous functioning as soon as possible; and

WHEREAS, The Legislature concludes that life and health insurance policy forms should not include certain exclusions from insurance coverage for acts of terrorism in policies filed with the Department of Banking and Insurance, that coverage for acts of terrorism should be made available in property and casualty policies and further concludes that "Act of War" clauses should not be applied to the events of September 11, 2001, but the Legislature notes, with concern, that policies filed or written in other jurisdictions may provide otherwise; and

WHEREAS, The Legislature approves of the actions the Department of Banking and Insurance has taken to minimize economic injury to financial services providers in the New Jersey region, for example, by allowing certain depository institutions and insurance service providers located in the World Trade Center area to conduct business in this State on a temporary basis; and

WHEREAS, It is further noted with approval that the Department of Banking and Insurance has issued three bulletins to its regulated industries, providing them guidance in these unusual circumstances; now, therefore,

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

1. The despicable, violent and abhorrent acts perpetrated on the World Trade Center, the Pentagon and United States domestic airlines in the terrorist attack of September 11, 2001 are condemned in the strongest terms.

2. All insurers, insurance producers, depository institutions, consumer finance licensees, real estate licensees and any others subject to regulation by the New Jersey Department of Banking and Insurance are urged to take the following steps in dealing with direct victims, their families, fire, police and medical personnel, volunteers and all others impacted by the tragedy: (1) demonstrate sensitivity with regard to the emotional plight of those who have been affected; (2) provide individualized victim assistance; (3) establish mobile claims centers; (4) establish toll free telephone numbers to report claims and make inquiries; (5) provide clear and prompt explanations about benefits or services; (6) interpret policy provisions liberally to assist victims and their families; (7) pay claims promptly and fairly; (8) provide efficient avenues for appealing claims decisions; (9) refer complaints to appropriate governmental

agencies for investigation and resolution; and (10) cooperate fully with the Department of Banking and Insurance and other federal, state and local agencies.

3. All insurers, insurance producers, depository institutions, consumer finance licensees, real estate licensees and any others subject to regulation by the New Jersey Department of Banking and Insurance are further urged to relax documentation requirements or other conditions relating to claims for insurance proceeds or other financial services by victims, their families, fire, police, and medical personnel, volunteers and all others impacted by the tragedy, for example: (1) the requirement of a formal death certificate to access accounts or receive life insurance proceeds or other benefits; (2) the requirement of specified waiting periods; (3) the requirement to use network hospitals, physicians or other providers or drug formularies for health or mental health care services; (4) the requirement to adhere strictly to time or payment schedules, such as time for payments, late fees, cancellation or nonrenewal of policies; (5) strict exercise of creditor's rights upon default, including starting or threatening foreclosure; and (6) any other requirements difficult to document or demonstrate given the circumstances.

4. The Department of Banking and Insurance, the Department of Law and Public Safety and other governmental agencies are urged to make the diligent and vigorous investigation and prosecution of fraudulent, predatory and discriminatory practices the highest priority where they are believed to affect victims, or anyone else impacted by the attack, adversely.

5. All insurers, insurance producers, depository institutions, consumer finance licensees, real estate licensees and any others subject to regulation by the New Jersey Department of Banking and Insurance are urged to remain vigilant against frauds and predatory financial practices, and to report instances promptly to authorities, so that citizens are not further victimized.

6. This joint resolution shall take effect immediately.

Approved January 9, 2002.

JOINT RESOLUTION NO. 9

A JOINT RESOLUTION creating a task force to study and make recommendations concerning driver distractions, including communications technology and non-technological activities, and their effects on highway safety.

WHEREAS, Communications technology provides vital communication devices used by people conducting business in the State and for other important purposes; and

WHEREAS, A substantial number of residents and others are utilizing communications technology while operating motor vehicles and such use has been linked by various studies to distraction of drivers and an increase in motor vehicle accidents; and

WHEREAS, The communications technology industry is an important source of jobs and economic growth within the State; and

WHEREAS, In today's fast-paced, multi-tasking society there are many opportunities for non-technological driver distractions while operating a motor vehicle, including fatigue, personal grooming, food and beverages, reading, passengers and unsecured pets; and

WHEREAS, The study and examination of common driver distractions, including communications technology and non-technological activities, is of great importance along with the formulation of recommendations aimed at helping better protect the users of this State's roads; and

WHEREAS, It is, therefore, altogether fitting and proper, and within the public interest, to create a task force to study and make recommendations concerning driver distractions, including communications technology and non-technological activities, and their effects on highway safety; now, therefore,

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

1. There is created a task force to be known as the "Task Force on Driver Distractions and Highway Safety" to study and make recommendations concerning the issue of highway safety and driver distractions,

including communications technology and other non-technological distractions.

The task force shall consist of 21 members as follows: the Commissioner of Transportation, ex officio, or a designated representative; the Director of the Division of Motor Vehicles in the Department of Transportation, ex officio, or a designated representative; the Superintendent of State Police in the Department of Law and Public Safety, ex officio, or a designated representative; the Director of the Office of Highway Traffic Safety, in the Department of Law and Public Safety, ex officio, or a designated representative; the Director of the Division of Insurance in the Department of Banking and Insurance, ex officio, or a designated representative; and 12 public members, to be appointed by the Governor, who shall include a representative of the New Jersey Highway Traffic Safety Policy Advisory Council, one representative of the wireless telephone industry, a representative of a not-for-profit highway safety organization, a representative of a not-for-profit child safety advocacy organization, a representative of the automobile manufacturers industry, a representative of the State's commercial driving school industry, a representative of the automobile insurance industry, one member of the public who uses wireless telephones to regularly conduct business and is a regular operator of a motor vehicle weighing in excess of twenty-six thousand pounds, one law enforcement officer engaged in highway patrol, a representative from the New Jersey State League of Municipalities, a representative from the New Jersey Conference of Mayors, a representative from the Driving School Association of New Jersey, two members of the General Assembly appointed by the Speaker of the General Assembly and two members of the Senate appointed by the President of the Senate. No more than one of the members appointed by the Speaker and the President shall be from the same political party. Legislative members shall serve while members of their respective houses for the term for which they were elected.

The members of the task force shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties.

2. The task force shall organize as soon as may be practicable after the appointment of a majority of its members and shall select a chairperson from among the members. The members shall select a secretary, who need not be a member of the task force.

The task force shall meet at the call of the chairperson.

The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission or agency, as it may require and as may be available for its

purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

3. a. The task force shall study and develop recommendations concerning the issue of highway safety and driver distractions, including:

(1) communications technology such as wireless telephones, pagers, facsimile machines, locator devices, AM/FM radios, compact disc players, audio cassette players, video players, citizens band radios, and dispatch radios; and

(2) non-technological distractions including, but not limited to, fatigue, personal grooming, food and beverages, reading and unsecured pets.

b. The study shall include, but not be limited to, investigating issues of highway and traffic safety as they relate to driver distractions, including the use of communications technology and non-technological activities. The task force shall review and analyze studies examining the effects of cellular telephones or similar equipment on highway and traffic safety. The task force shall also review and analyze studies and statistics relating to other types of driver distractions which affect highway and traffic safety. The task force shall inquire into innovative communications technologies being used or proposed to be used in motor vehicles that may help alleviate risks to highway and traffic safety.

c. The task force shall develop recommendations for public and private strategies and recommendations for legislative or regulatory action, if deemed appropriate, to address these issues. The recommendations shall include suggestions for the development of public information campaigns to educate and inform motorists of risks associated with driving distractions, including communications technology and non-technological activities, and methods of lessening such potential risks. The task force shall also develop recommendations for improving highway and traffic safety and reducing motor vehicle accidents related to the use of communications technology and non-technological activities in conjunction with the operation of a motor vehicle.

d. The task force's recommendations shall be aimed at decreasing the risk of driving accidents due to driver distractions, including the use of communications technology and non-technological activities. The task force shall review the impact of such recommendations upon businesses and individuals dependent on communications technology to conduct business or for other important purposes.

4. The task force shall prepare and submit a final report containing its findings and recommendations, including any recommendations for legislative or regulatory action that it deems appropriate, as prescribed in section 3 of this joint resolution, no later than one year after the task force organizes, to the Governor, the President of the Senate and the Speaker of the General Assembly, and the members of the Senate Transportation Committee and the Assembly Transportation Committee, or their successors.

5. This joint resolution shall take effect immediately and shall expire 30 days after the task force submits its final report, as prescribed in section 4 of this joint resolution.

Approved January 15, 2002.

EXECUTIVE ORDERS

(2521)

EXECUTIVE ORDER NO. 124

WHEREAS, Weather forecasts as of today predict a severe winter storm for the period March 4 to 6, 2001 threatening heavy rain, high winds, possible river and tidal flooding, beach erosion and significant snowfalls in blizzard-like conditions; and

WHEREAS, The aforesaid weather conditions require advance preparations to adequately protect the health, safety, welfare and property of the people of the State of New Jersey particularly with respect to the possible evacuation of the barrier islands; and

WHEREAS, The aforesaid weather conditions constitute an imminent hazard which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities or counties of this State; and which is in some parts of the State and may become in other parts of the State too large in scope to be handled by the normal municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A.38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A.38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

THEREFORE, I, Donald T. DiFrancesco, Acting 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:

1. Do declare and proclaim that a State of Emergency exists in the State of New Jersey.

2. Empower, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) as supplemented and amended, the State Director of Emergency Management who is the Superintendent of State Police, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State Highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area, that, in the State Director's discretion, is deemed necessary for the protection of

the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

3. Authorize, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-33 et seq.) as supplemented and amended, the Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Superintendent of State Police within their respective municipalities.

4. Authorize the State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health safety or welfare because of the conditions created by this emergency.

5. Authorize and empower the State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure or vehicle during the course of this emergency.

6. Authorize, in accordance with the Laws of 1963 Chapter 109 (N.J.S.A.38A:2-4) and the Laws of 1979, Chapter 240 (N.J.S.A.38A:3-6.1), the Adjutant General to order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

7. Reserve, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-34), as supplemented and amended, the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

8. Authorize the executive head of any agency or instrumentality of the State government with authority to promulgate rules, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Directory of Emergency, to waive, suspend or notify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated March 4, 2001.

EXECUTIVE ORDER NO. 125

WHEREAS, Executive Order No. 124, issued on March 4, 2001, declared a state of emergency in anticipation of the arrival of a severe winter storm threatening blizzard-like conditions and coastal flooding; and

WHEREAS, The emergency powers conferred upon the Governor by the Constitution and statutes of the State of New Jersey are no longer necessary to cope with the consequences of the winter storm impacting New Jersey from March 4 to March 6, 2001;

NOW, THEREFORE, I, DONALD T. DIFRANCESCO, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT that the State of Emergency declared in Executive Order No. 124 is hereby terminated effective immediately.

Dated March 8, 2001.

EXECUTIVE ORDER NO. 126

WHEREAS, Advances in newborn screening technology, treatment options, and gene discoveries now allow for the screening of a number of disorders in newborn infants that were previously undetectable; and

WHEREAS, The New Jersey Department of Health and Senior Services (DHSS) Newborn Biochemical Screening Program provides the citizens of New Jersey with screening of newborns for specific disorders that are detectable and traceable so that affected individuals can obtain comprehensive and coordinated care for the disorders from appropriate medical specialists; and

WHEREAS, Advances in technologies continue to make it possible to expand the DHSS Newborn Biochemical Screening Program to include screening for additional disorders; and

WHEREAS, The Newborn Screening Advisory Panel convened last year by the Commissioner of Health and Senior Services established basic criteria for the inclusion of a disorder in the state mandated Newborn Biochemical Screening Program, which included the ability to test for the disorder with an acceptable error rate, the life threatening nature of the disorder and the availability of an acceptable treatment option for the disorder;

NOW, THEREFORE, I, DONALD T. DiFRANCESCO, Acting 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 Department of Health and Senior Services to empanel a Newborn Screening Annual Review Committee (committee) that shall be charged with reviewing disorders, newborn screening technologies, available treatment options and the Newborn Biochemical Screening Program on an annual basis. The committee shall meet no less than once each calendar year, beginning with the 2002 calendar year. The committee shall conduct its review, allow for public input and issue a recommendation to the Commissioner of the Department of Health and Senior Services on the improvement of the state mandated Newborn Biochemical Screening Program.

Dated April 12, 2001.

EXECUTIVE ORDER NO. 127

WHEREAS, It is the policy of this State to eradicate and prohibit the practice of racial profiling in which law enforcement officers prejudice the likelihood that persons are engaged in criminal activity based not

upon an objective assessment of their conduct but rather upon their race or ethnicity; and

WHEREAS, The practice of racial profiling offends the interests of all citizens in being treated fairly, impartially, and justly and, is, therefore, contrary to fundamental notions of fairness and respect for individual civil rights; and

WHEREAS, The practice of racial profiling undermines the confidence of the citizens of this State that the New Jersey State Police and other law enforcement agencies are enforcing laws in a fair, impartial and evenhanded manner; and

WHEREAS, It is imperative to ensure that civil rights are not abridged and to restore public confidence in the integrity and impartiality of the law enforcement community by taking steps to eradicate all forms of racial profiling by any law enforcement agency operating under the laws of this State; and

WHEREAS, It is vitally important that, in addition to the measures already being taken to end the practice of racial profiling, all New Jerseyans work together to forge a stronger, more positive and cooperative relationship between New Jersey's law enforcement agencies and the communities they serve; and

WHEREAS, In order to foster an environment that will facilitate the eradication of the practice of racial profiling, it is appropriate to convene a Statewide summit to study the state of police and community relations in New Jersey, including the practice of racial profiling, and to establish an Institute to explore "Policing in a Modern Democratic Society" at the Graduate School of Criminal Justice at Rutgers, the State University;

NOW, THEREFORE, I, DONALD T. DiFRANCESCO, Acting 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 INSTRUCT and DIRECT:

1. The Attorney General shall convene, within 120 days following the issuance of this Executive Order, a Statewide Summit of law enforcement executives and community leaders to examine the practice of racial profiling, and to review those efforts being made by the New Jersey State Police and the Office of State Police Affairs, other law enforcement

agencies in New Jersey, law enforcement executives from other jurisdictions throughout the United States, and scholars and other experts in the field to address the practice of racial profiling and otherwise to enhance the relationship between law enforcement agencies and the communities they serve.

2. There is hereby established in the Graduate School of Criminal Justice at Rutgers, The State University, an Institute whose mission shall be to explore "Policing in a Modern Democratic Society." As its first project, the Institute shall examine the issue of racial profiling and consider how law enforcement can develop effective partnerships with New Jersey's diverse communities to ensure the protection of civil rights and public safety. In so doing, the Institute shall identify the expectations of the community and responsibilities of law enforcement, and determine the means by which law enforcement public policymakers can understand these expectations and translate them into public safety strategies that are effective, comply with local mandates and are acceptable to the community.

Toward this end, the Institute shall assist the Attorney General with the Statewide Summit and thereafter convene a series of workshops, seminars and meetings, as may be appropriate, for members of law enforcement and the community in order to identify the prevalent issues and develop strategies to deal effectively with those issues. The Institute shall engage in research and utilize the resources of the University to work with several communities in a "laboratory" setting to implement the strategies developed by the Institute.

Dated May 23, 2001.

EXECUTIVE ORDER NO. 128

WHEREAS, When the New Jersey Highway Authority (the "Authority") was first established in 1952, it was widely understood by the public that tolls on the Garden State Parkway (the "Parkway") would only be necessary until such time as the bonds financing the cost of the construction of the Parkway could be retired; and

WHEREAS, The Parkway has been a toll road for nearly 50 years and there is no existing plan or timetable to either permanently retire the bonds of the Authority or to phase out tolls on the Parkway; and

WHEREAS, The Authority was established and authorized to take, construct, maintain and operate the Parkway to facilitate vehicular traffic and remove the then existing handicaps and hazards on congested highways, and now the Parkway's toll barrier plazas constructed for the collection of tolls by means of periodic main line toll barriers is economically inefficient, directly impedes and interferes with the free flow of traffic, increases energy consumption, and contributes to the creation of traffic congestion and delay; and

WHEREAS, The Authority and the State will fully and affirmatively honor its financial and other obligations to its bondholders, and further, will honor its financial and other obligations as part of the electronic toll collection consortium, it must also be affirmatively stated that the first priority of the Authority is to serve the citizens of the State of New Jersey and the Parkway users; and

WHEREAS, The institution of a 24-hour, one-day, toll holiday on Labor Day 2001, which is a peak summer travel day, whereby the Authority would permit the passage of vehicles on the Parkway without the imposition of a toll or charge, will contribute to the free flow of traffic and provide much needed traffic congestion relief; and

WHEREAS, The institution of a discounted charge for EZ-Pass users will encourage greater utilization of the EZ-Pass electronic toll system, which will also contribute to the free flow of traffic and provide traffic congestion relief; and

WHEREAS, The public expects and demands relief from the continued inconvenience of the imposition of barrier tolls on the Parkway;

NOW, THEREFORE, I, DONALD T. DiFRANCESCO, Acting 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 Commissioner of the New Jersey Department of Transportation (the "Commissioner") is directed to prepare a Garden State Parkway Congestion Relief Plan, which will phase out toll barrier plazas on the Parkway over a stated period of time not to exceed ten (10) years. The Parkway Congestion Relief Plan shall address all issues related to the phase out of toll barrier plazas, including, but not limited to the engineering and

planning, financial, and legal implications. The Commissioner may retain such consultants as are necessary for the preparation of said plan.

2. The Commissioner shall provide the Parkway Congestion Relief Plan to the Governor no later than sixty (60) days from the effective date of this Executive Order.

3. The Commissioner, who serves as an ex officio member of the Authority, is directed to request that the Authority institute a 24-hour, one-day, toll holiday on Monday, September 3, 2001. On such date, the Authority shall permit the passage of vehicles on the Garden State Parkway without the imposition of a toll or charge.

4. The Commissioner is further directed to request that the Authority offer a discounted charge for EZ-Pass users.

5. This Order shall take effect immediately.

Dated May 31, 2001.

EXECUTIVE ORDER NO. 129

WHEREAS, Assemblyman Alan M. Augustine, a devoted family man, received his bachelor of arts degree from Lafayette College, and dedicated many years in public service to the people of New Jersey; and

WHEREAS, Assemblyman Augustine began his distinguished public service in his hometown of Scotch Plains where he was a township councilman for 20 years, serving as mayor for three terms; and

WHEREAS, Assemblyman Augustine also served the residents as a member of the Union County Board of Chosen Freeholders for eight years, serving as freeholder director in 1987; and

WHEREAS, Appointed in 1992 to represent parts of Middlesex, Morris, Union and Somerset Counties in the 22nd legislative district in the General Assembly, Assemblyman Augustine continued to win election to that seat until his resignation earlier this year; and

WHEREAS, A respected leader in the General Assembly, Assemblyman Augustine served as chairman of the important Assembly State

Government Committee and was a valued member of both the Banking and Insurance and Transportation Committees;

WHEREAS, Recognized many times for his outstanding legislative efforts, Assemblyman Augustine sponsored numerous bills that were enacted into law, including the Mandates Relief Acts, the Railroad Immunity Act and the Identity Theft Act;

WHEREAS, It is with deep sadness that we mourn the loss of Assemblyman Augustine and extend our sincerest sympathy to his family and friends; and

WHEREAS, It is fitting and appropriate to honor the memory and passing of Assemblyman Augustine;

NOW, THEREFORE, I, DONALD T. DIFRANCESCO, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours beginning Tuesday, June 12, 2001 through and including Friday, June 15, 2001, in recognition and mourning of the passing of Assemblyman Augustine.

2. This Order shall take effect immediately.

Dated June 12, 2001.

EXECUTIVE ORDER NO. 130

WHEREAS, On June 22, 2001, three commercial vehicles traveling along I-80 west were involved in an accident at the bridge over Den Brook at milepost #39 in Denville, Morris County, New Jersey; and

WHEREAS, The accident caused a breach in a commercial tanker hauling approximately 8,200 gallons of gasoline, which flowed onto the roadway and into the nearby drainage; and which ignited, causing serious damage to and catastrophic failure of the roadway and bridge; and

WHEREAS, The bridge was found to be structurally unsound due to the intense heat of the fire, requiring closure of the roadway and replacement of the deck and structural members down to the abutments; and

WHEREAS, The spill and fire also caused environmental damage in the surrounding area; and

WHEREAS, The aforesaid circumstances constitute a hazard which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities of this State; and which is too large in scope to be handled by the normal municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

THEREFORE, I, Donald T. DiFrancesco, President of the Senate, Acting 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:

1. Declare and proclaim that a State of Emergency has existed and presently exists in Morris County; and

2. Empower, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State Highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area, that, in the State Director's discretion, is deemed necessary for the protection of the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant; and

3. Authorize, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-34), as supplemented and amended, the Attorney General, pursuant to the provisions of N.J.S.A.39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway,

and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies, and further authorize all law enforcement officers to enforce any such order of the Superintendent of State Police within their respective municipalities; and

4. Authorize the State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency; and

5. Authorize and empower the State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may be stranded during the course of this emergency; and

6. Reserve, in accordance with the Law of 1942, Chapter 251 (N.J.S.A. App. A:9-34), as supplemented and amended, the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency; and

7. Direct the Commissioner of Transportation to undertake immediately all acts necessary to accomplish, as expeditiously as possible, the restoration and repair of the damaged proportion of I-80 and to take all necessary steps to obtain emergency repair funds available pursuant to 23 U.S.C. s.125 and any other applicable law; and

8. Declare that it shall be the duty of every person or entity in this State or doing business in this State, and the members of the governing body, and of each and every official, agent or employee of every political subdivision in this State and of each member of other governmental bodies, agencies and authorities in this State of any nature whatsoever, fully to cooperate with the Commissioners of Environmental Protection and Transportation, the Attorney General, and the State Director of Emergency Management in all matters concerning this emergency; and

9. Declare, pursuant to the Laws of 1942, Chapter 251, as supplemented and amended (N.J.S.A. App. A:9-40), that no municipality, county

or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way interfere with or impede the achievement of the purposes of this Order.

10. This act shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated July 3, 2001.

EXECUTIVE ORDER NO. 131

WHEREAS, The World Trade Center towers in New York City have been the subject of a terrorist attack resulting in an explosion and the destruction of the towers, and a similar attack has occurred at the Pentagon; and

WHEREAS, The attack in New York City appears to have been from hi-jacked commercial airliners that were crashed into the World Trade Center; and

WHEREAS, The Federal Aviation Administration has grounded all flights at Newark International Airport and throughout the country; and

WHEREAS, The bridges and tunnels between New York City and New Jersey have been closed creating serious disruption of traffic and communications; and

WHEREAS, Traffic on roadways throughout the State has been hampered and brought to a complete stand-still in the northern part of the State; and

WHEREAS, Several municipalities have begun to evacuate buildings as a precaution against possible terrorist acts; and

WHEREAS, Numerous casualties are being transported from the City of New York to hospitals and other locations throughout the State of New Jersey; and

WHEREAS, These conditions constitute a disaster from man made causes which threaten and presently do endanger the health, safety or resources

of the residents of more than one municipality and county of this State; and may become in other parts of the State too large in scope to be handled in its entirety by the normal municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A.38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A.38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers.

THEREFORE, I, Donald T. DiFrancesco, President of the Senate, Acting Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a State of Emergency has existed and presently exists in the State of New Jersey.

NOW THEREFORE, in accordance with the Laws of 1963 Chapter 109 (N.J.S.A.38A:2-4), I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty such members of the New Jersey National Guard that, in his judgement, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare. He may authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) as supplemented and amended, I hereby empower the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, through the police agencies under his control to determine and control the direction of the flow of such vehicular traffic on any State Highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area, that the State Director, in his discretion, deems necessary for the protection of the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) as supplemented and amended, I hereby authorize the Attorney General, pursuant to the provisions of N.J.S.A.39:4-213, acting through the Superintendent of the Division of State

Police to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which this declaration of emergency applies. I further authorize all municipal law enforcement officers to enforce any such orders of the Superintendent of State Police within their respective municipalities.

FURTHERMORE, 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. 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, buildings or vehicles during the course of this emergency.

FURTHERMORE, in accordance with the Laws of 1941, Chapter 251 (N.J.S.A.App.A:9-33 et seq.), I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency, and

FURTHERMORE, I direct that the heads of any agency or instrumentality of the State government with authority to promulgate rules may, for the duration of this Executive Order, subject to my prior approval and in consultation with the State director of Emergency Management, waive, suspend or modify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A.App.A:9-45.

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.

Dated September 11, 2001.

EXECUTIVE ORDER NO. 132

WHEREAS, On September 11, 2001, terrorists injured or killed thousands of innocent victims in the United States by hi-jacking and crashing four commercial airliners; and

WHEREAS, Two of the commercial airliners were crashed into the World Trade Center towers in New York City; and

WHEREAS, It is estimated that a significant percentage of the victims at the World Trade Center towers were residents of the State of New Jersey; and

WHEREAS, Immediately following the terrorist attacks the State of New Jersey declared a State of Emergency (Executive Order No. 131) and fully mobilized all State and local resources to implement and support recovery and victim assistance efforts; and

WHEREAS, This Administration seeks to facilitate these recovery and victim assistance efforts by creating a centralized office under the supervision of the Governor that will administer, lead and coordinate State government's recovery and victim assistance efforts;

NOW, THEREFORE, I, DONALD T. DIFRANCESCO, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created the Office of Recovery and Victim Assistance (hereinafter "Office").
2. The Office of Recovery and Victim Assistance shall consist of a Recovery Coordinator to be directly appointed by the Governor. The Recovery Coordinator shall serve at the pleasure of the Governor.
3. The Recovery Coordinator is hereby empowered to administer, lead and coordinate State government's efforts in providing recovery and victim assistance and shall perform such other duties as the Governor may from time to time prescribe. The Recovery Coordinator shall perform these duties in consultation with the Office of Emergency Management, as appropriate.

4. The Recovery Coordinator is hereby authorized to fulfill the mandates of this Order, subject to the provisions of Title 11A of the New Jersey Statutes, when relevant, other applicable statutes, and the appropriations limit for this Office.

5. 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 its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Recovery Coordinator and provide such 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 handle recovery and victim assistance efforts.

6. This Order shall take effect immediately.

Dated September 17, 2001.

EXECUTIVE ORDER NO. 133

WHEREAS, The President of the United States has authorized the deployment of United States military forces as part of Operation Noble Eagle and other related operations in response to the September 11, 2001 attacks on the World Trade Center and Pentagon, in accordance with law; and

WHEREAS, The President may authorize the Secretary of Defense to call up select members of the Reserve and National Guard to active duty, and may authorize the Secretary of Transportation to call up members of the Coast Guard Reserve; and

WHEREAS, Reserve and National Guard members who are activated during this crisis will serve vital national and state interests for which they deserve the full support of the citizens of this State; and

WHEREAS, The Governor may order certain members of the New Jersey Organized Militia, including the New Jersey National Guard, to active duty pursuant to N.J.S.A. 38A:2-4 or N.J.S.A. 38A:2-5; and

WHEREAS, Organized Militia members, including the New Jersey National Guard, Naval Militia and State Guard, who may be activated for state active duty service in support of Operation Noble Eagle and other related operations in response to the September 11, 2001 attacks on the World Trade Center and Pentagon pursuant to N.J.S.A.38A:2-4 will serve a vital State 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 Organized Militia, 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 Organized Militia, including the National Guard, who are called to active duty for or in support of Operation Noble Eagle and other related operations in response to the September 11, 2001 attacks on the World Trade Center and Pentagon;

NOW, THEREFORE, I, Donald T. DiFrancesco, Acting 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 federal or state active duty during Operation Noble Eagle and other related operations in response to the September 11, 2001 attacks on the World Trade Center and Pentagon 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 this crisis, these State employees shall be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military base pay following the exhaustion of statutory entitlements to full pay.

3. These State employees shall be entitled to State 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. If a State employee's military base pay is greater than his or her State salary, such that he or she would not receive differential pay under paragraph 2 of this Order, that State employee shall, nonetheless, be entitled to State employee health benefits, life insurance and pension coverage during active duty service, with the State employee's contributory portion of those benefits and programs to be paid by the employee upon his or her return to State employment, after completion of active duty.

5. The Commissioner of Personnel shall implement this Executive Order and each department, office, division, or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to the Commissioner such information, personnel, and assistance as necessary to accomplish the purposes of this Order.

6. This Order shall take effect immediately, and shall apply retroactively to all State employees who were placed on federal or state active duty on or after September 11, 2001.

Dated September 26, 2001.

EXECUTIVE ORDER NO. 134

WHEREAS, On September 11, 2001, terrorists injured or killed thousands of innocent victims in the United States by hijacking and crashing four commercial airliners; and

WHEREAS, Two of the commercial airliners were crashed into the World Trade Center towers in New York City, one commercial airliner was crashed into the Pentagon while another crashed in Pennsylvania; and

WHEREAS, It is estimated that a significant percentage of the victims in these attacks were residents of the State of New Jersey; and

WHEREAS, While this a national crisis, the toll on the State of New Jersey and its residents has been severe; and

WHEREAS, The State of New Jersey has fully mobilized State and local resources to support victim assistance efforts; and

WHEREAS, The State of New Jersey recognizes the need to remember and honor the victims of the September 11, 2001 attacks; and

WHEREAS, It is appropriate to create a New Jersey World Trade Center Victims Memorial Commission (hereinafter "Commission") under the supervision of the Governor that will develop a concept for and recommend the nature of a permanent memorial in honor of the New Jersey victims of the attacks; and

WHEREAS, The Commission will further recommend either the creation of a non-profit foundation to assure the funding of the design, selection and construction of the memorial or recommend the designation of an existing fund to carry out such responsibility;

NOW, THEREFORE, I, Donald T. DiFrancesco, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established in, but not of, the Department of the Treasury the New Jersey World Trade Center Victims Memorial Commission.

2. The Commission shall be directly appointed by and shall serve for the term specified herein. The Commission shall consist of seventeen members. As part of the seventeen members, there shall be three co-chairs to be directly appointed by the Governor. The Commission shall consist of the following members:

- (a) The State Treasurer, or a designee, shall serve ex-officio;
- (b) The Adjutant General, or a designee, shall serve ex-officio;
- (c) The Attorney General, or a designee, shall serve ex-officio;
- (d) The Secretary of State, or a designee, shall serve ex-officio;
- (e) The Commissioner of the Department of Environmental Protection, or a designee, shall serve ex-officio;
- (f) The Recovery Coordinator from the Office of Recovery and Victim Assistance, or a designee, shall serve ex-officio;
- (g) The Chair of the Port Authority of New York and New Jersey, or a designee, shall serve ex-officio;
- (h) Six public members directly appointed by the Governor.
- (i) In addition to the members directly appointed by the Governor, the Senate President shall recommend two members from different party affiliations for direct appointment by the Governor.

(j) In addition to the members directly appointed by the Governor, the Speaker of the Assembly shall recommend two members from different party affiliations for direct appointment by the Governor.

3. The Commission shall organize and meet as soon as practicable after the appointment of the majority of its members. Each member shall hold office for a period of two years and until his or her successor is appointed. A member appointed to fill a vacancy occurring on the Commission for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. A member may be appointed for any number of successive terms. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members.

4. The Office of the Governor shall provide staffing necessary to facilitate the needs of the Commission.

5. The Commission shall develop a concept for and recommend to the Governor and the Legislature the nature of a permanent memorial in honor of the New Jersey victims of the attacks.

6. The Commission will further recommend either the creation of a non-profit foundation to assure the funding of the design, selection and construction of the memorial or recommend the designation of an existing fund to carry out such responsibility.

7. The Commission is authorized to utilize any and all outside resources, including consultants and experts, deemed necessary to discharge its responsibilities under this Order, subject to appropriation.

8. The Commission is authorized to call upon any department, office or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, office, division and agency of this State is hereby required to cooperate with the Commission and to furnish it with such information, personnel and assistance as is necessary to accomplish the purposes of this Order.

9. The Memorial shall be sited at a suitable location within the grounds of Liberty State Park.

10. The Commission is charged with delivering a preliminary report to the Governor and the Legislature within 75 days of the adoption of this Order. A final report is to be returned to the Governor in 180 days.

11. This Order shall take effect immediately.

Dated October 3, 2001.

EXECUTIVE ORDER NO. 135

I, DONALD T. DiFRANCESCO, Acting 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 23, 2001, 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 23, 2001.

Dated November 15, 2001.

EXECUTIVE ORDER NO. 136

I, DONALD T. DiFRANCESCO, Acting 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. December 24, 2001, the day before Christmas, 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, preclude such absence on December 24, 2001.

Dated December 17, 2001.

EXECUTIVE ORDER NO. 137

WHEREAS, On July 18, 2000, the Educational Facilities Construction and Financing Act, P.L.2000, c.72 ("Act"), became law and established a new funding formula and construction options for school facilities projects; and

WHEREAS, The Act commits significant State and local resources to address the compelling, urgent need to construct new school facilities, and rehabilitate existing school facilities; and

WHEREAS, Many school facility project to date have been approved for funding pursuant to the Act in order to address these compelling needs; and

WHEREAS, Executive Order 215 confirms that the intended benefit of Executive Order 215 results from environmental assessments performed prior to the time of approval; and

WHEREAS, A reasonable balancing of public policy considerations in harmony with reasonable cost and time efficiencies, including protecting taxpayers' investments, requires clarification as contained in this Order.

THEREFORE, I DONALD T. DiFRANCESCO, President of the Senate, Acting 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:

1. Declare and proclaim that any school facilities project which receives approval from the Commissioner of Education on or before December 18, 2001, shall be exempted from the requirements of Executive Order 215; and

2. This Order shall take effect immediately.

Dated December 18, 2001.

EXECUTIVE ORDER NO. 138

WHEREAS, Special Events are held within Liberty State Park which are the result of requests by public organizations, private organizations, government agencies and individuals; and

WHEREAS, Special Events include, but are not limited to, movie productions, concerts, celebrations, boat docking, festivals, rallies, races, walkathons; and

WHEREAS, Special Events impact the natural, historic, human and fiscal resources of Liberty State Park; and

WHEREAS, Special Events should not conflict with the mission of Liberty State Park, which states, "The Mission of Liberty State Park is to provide the public with access to the harbor's resources, a sense of history, and the charge of responsibility for its continued improvements";

NOW, THEREFORE, I, DONALD T. DiFRANCESCO, President of the Senate, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Environmental Protection's Division of Parks and Forestry is the only agency that may authorize, approve and schedule Special Events within Liberty State Park.

2. All proposal for Special Events must be submitted to the Department of Environmental Protection's Division of Parks and Forestry to be analyzed, organized, scheduled and managed prior, during and after the event.

3. This Order shall take effect immediately.

Dated January 8, 2002.

EXECUTIVE ORDER NO. 139

WHEREAS, This State is experiencing a critical shortage in its nursing workforce; and

WHEREAS, A shortage of 14,000 registered nurses and 3,800 licensed practical nurses is forecasted for 2006, and by 2020, the shortage may be over 24,000 registered nurses; and

WHEREAS, A number of factors are contributing to the shortage, including the delivery of more care in outpatient settings, shorter lengths of stay in acute and long-term care settings, and the development of alternatives to nursing home care; and

WHEREAS, These changes have resulted in more employment options for nurses that make it difficult for employers to recruit and retain qualified nursing personnel; and

WHEREAS, The current shortage is expected to worsen as nursing school enrollments continue to decline and a significant number of nurses retire over the next decade; and

WHEREAS, The multifaceted nature of these problems necessitates that all interested and affected parties cooperate and collaborate in the development of solutions;

NOW, THEREFORE, I, JOHN O. BENNETT, Acting 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 to Promote the Profession of Nursing in New Jersey is hereby established as set forth in this Order. The Advisory Council shall consist of sixteen (16) members as follows:

a. Five (5) non-voting, ex officio members, including the chair and vice chair, appointed by the Governor, which shall include the Commissioners of Health and Senior Services, Human Services, Education and Labor and the Executive Director of the New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety, or their designees;

b. Seven (7) public members appointed by the Governor, which shall include one (1) nurse upon the recommendation of the New Jersey State Nurses Association, one (1) nurse upon the recommendation of the Licensed Practical Nurses Association of New Jersey, Inc., two (2) nurses upon the recommendation of the Organization of Nursing Executives of New Jersey, one (1) nurse educator teaching or administering an A.D. program, one (1) nurse educator teaching or administering a B.S.N.

program, and one (1) nurse educator teaching or administering a diploma school program.

c. Two (2) members appointed by the President of the Senate, who shall be of different political parties and who shall be actively involved in nursing services; and

d. Two (2) members appointed by the Speaker of the General Assembly, who shall be of different political parties and who shall be actively involved in nursing services.

2. The Advisory Council shall assist the Governor in proposing legislation and its recommendations shall be based upon the following objectives:

a. The recommendations must include a determination of the current extent and long-term implications of the growing shortage of nursing personnel in the State;

b. The recommendations must relate to the education, recruitment and retention of qualified nursing personnel in New Jersey; and

c. The recommendations must evaluate mechanisms currently available in the State and other states that are intended to enhance the education, recruitment and retention of nurses in the workforce.

3. The Advisory Council shall present its recommendations on or before September 1, 2002.

4. The Advisory Council is authorized to call upon any department, office, division or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, office, division and agency of this State is hereby required 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.

5. The Advisory Council shall hold at least three (3) public hearings as it discharges its responsibilities under this Order.

6. This Order shall take effect immediately.

Dated January 9, 2002.

EXECUTIVE ORDER NO. 140

WHEREAS, Recent events surrounding the September 11, 2001 tragedy and subsequent anthrax contamination have heightened the public's awareness of the need for a fully integrated and updated public health system in order to respond to public health emergencies; and

WHEREAS, A coalition of public health officials, health care providers and others recently published a report, "Crafting a Restructured Environment (CARE)" which identified the major components of New Jersey's public health system, including among other issues: infrastructure; fragmentation administrative and operational structure; inadequate funding; lack of public perception; limited access to data; professional recruitment, training and retention; and limited access for segments of the population; and

WHEREAS, It is incumbent upon the State to take action at this time to undertake a comprehensive review to determine whether the State's public health system is sufficiently prepared to handle future public health emergencies,

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority invested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. That there is hereby established a Governor's Task Force on Public Health Emergency Planning (Task Force). The Task Force shall consist of twelve (12) members as follows:
 - a. The Commissioner of Health and Human Services, or a designee, who shall serve ex-officio;
 - b. The Attorney General, or a designee, who shall serve ex-officio;
 - c. An epidemiologist;
 - d. An expert in infectious diseases;
 - e. A representative with a background in ensuring that our water supply is safe from terrorism attack;
 - f. A representative with a background in ensuring that our food supply is safe from terrorist attack;
 - g. An expert with a background and knowledge of coordinating the education and communications systems needed to respond to an emergency;
 - h. A representative from the Public Health Association;

- i. The Adjutant General of the Department of Military and Veterans' Affairs Director of Affairs, or a designee, shall serve ex-officio;
- j. The Director of the Office of Emergency Management, or a designee, ex-officio;
- k. Two public members appointed by the Governor who have expertise in public health issues.

2. The Task Force shall organize and meet as soon as practicable after the appointment of its members. The Governor shall appoint a Chairperson and Vice-Chairperson. Each member shall hold office for the term of one year and until his or her successor is appointed and qualified. A member appointed to fill a vacancy occurring on the Task Force for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. A member may be appointed for any number of successive terms. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members.

3. The Task Force is charged with:
- a. examining the infrastructure of New Jersey's public health system (at all levels) to determine whether New Jersey is ready to serve the public health needs of its citizens in the event of a future terrorist attack or other public health emergency;
 - b. recommending a single definition of "public health" to allow the more than 600 boards of health and local health officials to coordinate their efforts and develop one coordinated public health system;
 - c. identifying the statutory and regulatory steps that should be taken to address any issues and/or shortfalls identified;
 - d. examining the relationships between local health officials and State health officials to determine whether there is adequate coordination and communication, whether the creation of county health departments is necessary and whether having approximately 525 boards of health and 115 local health agencies properly utilizes State resources;
 - e. determining whether the following public health system principles are being met:
 - i. preventing epidemics;
 - ii. protecting the environment, workplace, housing, food and water;
 - iii. promoting good health behaviors;
 - iv. monitoring the health status of the population;
 - v. mobilizing community action;
 - vi. responding rapidly and effectively to disaster;

- vii. promoting the quality, accessibility and accountability of medical care;
 - viii. identifying and reaching out to link high-risk and inaccessible people to needed services;
 - ix. conducting research to develop new insights and innovative solutions; and
 - x. leading the development of sound health policy and planning.
- f. determining whether additional funding of our public health system is necessary;
 - g. recommending changes to New Jersey's public health system.

4. The Task Force shall issue a report in 6 months presenting its findings and recommendations to the Governor and both houses of the Legislature.

5. The Task Force is authorized to call upon any department, office or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, office or division and agency of the State is hereby directed, to the extent not inconsistent with law and within budgetary constraints to cooperate with the Task Force to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this order.

6. This Order shall take effect immediately.

Dated January 14, 2002.

EXECUTIVE ORDER NO. 141

WHEREAS, Executive Order 139 created the Advisory Council to Promote the Profession of Nursing in New Jersey; and

WHEREAS, The Advisory Council consists of sixteen (16) members, five (5) non-voting, ex officio members, seven public members appointed by the Governor, two (2) members appointed by the President of the Senate, and two (2) members appointed by the Speaker of the General Assembly; and

WHEREAS, The membership of the Advisory Council would be enhanced by adding four (4) members of the New Jersey State Legislature who

possess experience with the issues to be addressed by the Advisory Council;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting 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 to Promote the Profession of Nursing in New Jersey established by Executive Order 139 (2002) will add the following four (4) members:

One (1) member appointed by the Speaker of the General Assembly to be selected from among Assembly members in the majority party, one (1) member appointed by the General Assembly Minority Leader to be selected from among Assembly members in the minority party, one (1) member appointed by the President of the Senate to be selected from among Senators in the majority party, one (1) member appointed by the Senate Minority Leader to be selected from among Senators in the minority party.

2. This Order shall take effect immediately.

Dated January 14, 2002.

EXECUTIVE ORDER NO. 142

WHEREAS, Executive Order 141 (2002) added four (4) members to the Advisory Council to Promote the Profession of Nursing in New Jersey, which was established pursuant to Executive Order 139 (2002); and

WHEREAS, The members added pursuant to Executive Order 141 are members of the New Jersey Legislature; and

WHEREAS, The Advisory Council will make legislative recommendations to the Governor to address the critical shortage in New Jersey's nursing workforce, and as a result, the Legislative members of the Advisory Council should be non-voting members;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting 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 member appointed by the Speaker of the General Assembly to be selected from among Assembly members in the majority party, the member appointed by the General Assembly Minority Leader to be selected from among Assembly members in the minority party, the member appointed by the President of the Senate to be selected from among Senators in the majority party, and the member appointed by the Senate Minority Leader to be selected from among Senators in the minority party shall be non-voting members.

2. This Order shall take effect immediately.

Dated January 15, 2002.

REORGANIZATION PLANS

(2553)

**REORGANIZATION PLAN NO. 001-2001
A PLAN FOR THE TRANSFER AND REORGANIZATION
OF THE STATE OFFICE OF DISABILITY SERVICES TO THE
DIVISION OF DISABILITY SERVICES IN THE
DEPARTMENT OF HUMAN SERVICES**

PLEASE TAKE NOTICE that on March 8, 2001, President of the Senate and Acting Governor Donald T. DiFrancesco hereby issues this Reorganization Plan No. 001- 2001 (the Plan), providing for the transfer and reorganization of the Office of Disability Services in the Department of Human Services and all of its functions, powers, duties and personnel as the newly created Division of Disability Services in the Department of Human Services and for the transfer to that Division of certain related functions, powers and duties of the Division of Medical Assistance and Health Services.

The Plan furthers an ongoing effort to streamline and make more effective the operations of the Executive Branch in the interests of efficiency and economy, without quantitative or qualitative diminution of services to the public.

GENERAL STATEMENT OF PURPOSE

The Office of Disability Services (Office) was created by P.L.1999, c.91 and allocated to the Department of Human Services (DHS). Headed by a director, the Office is charged with acting as the single point of entry with State government for persons with disabilities who are seeking assistance but who do not meet the requirements for the disability-specific programs located in DHS or other agencies of State government. The Office is charged with acting as the State-level coordinating body among State agencies providing services to persons with disabilities and is charged with serving as the locus within the State government for the interests of persons with disabilities and their families. Finally, the Office administers the Personal Assistance Services Program under P.L. 1987, c.350 (N.J.S.A. 30:4G-13 et seq.) and coordinates other publicly funded programs that provide personal assistance and other home-based services to persons with disabilities.

The Division of Medical Assistance and Health Services (DMAHS) in DHS also administers certain programs and services similar to those administered by the Office. These programs and services also are designed

to serve persons with disabilities and their families and include certain home and community-based waiver programs, and other long-term personal care assistant services.

This Plan will provide for more effective and efficient coordination and delivery of home and community-based waiver programs, and personal care assistant services by transferring the administration of these programs and services to the newly created Division of Disability Services (Division). The Division will continue the functions of the Office of Disability Services, but will ensure that continued policy and program development for persons with disabilities and their families occurs in a centralized location, with an emphasis on reducing duplication and increasing coordination and efficiency.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.) (Act), I find with respect to the transfer and reorganization provided for in this Plan, that each aspect of the Plan is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. Promote the more effective management of the Executive Branch by consolidating within one Division within the Department of Human Services certain home and community-based waiver programs, and personal care assistant services targeted to people with disabilities;
2. Reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive Branch;
3. Increase the efficiency of the operations of the Executive Branch to the fullest extent practicable;
4. Group, coordinate and consolidate functions in a more consistent and practical manner according to major purposes; and
5. Eliminate overlapping and duplication of effort by having the newly created Division of Disability Services administer the home and community-based waiver programs, and personal care assistant services targeted to people with disabilities.

PROVISIONS OF THE REORGANIZATION PLAN

Therefore, I hereby order the following reorganization:

1. (a) The Office of Disability Services in the Department of Human Services, established pursuant to P.L.1999, c.91 (C.30:6E-1 et seq.) and its functions, powers, duties and personnel are continued and are transferred to the newly created Division of Disability Services within the Department of Human Services.

(b) The functions, powers, and duties of the Director of the Office of Disability Services under P.L.1999, c.91 (C.30:6E-1 et seq.) are continued and are transferred to the newly created position of Director of the Division of Disability Services within the Department of Human Services.

(c) The functions, powers and duties of the Office under P.L.1994, c.182 s.26 (C.19:31-6.11), P.L.1995, c.318, s.2, as amended (C.26:2B-37), P.L.1987, c.350, s.3 and s.8, as amended (C.30:4G-15), P.L.1981, c.488, s.3, as amended (C.30:6-25) and P.L.1975, c.224, s.2, as amended (C.52:32-15) are continued and are transferred to the Director of the Division of Disability Services as appropriate, within the Department of Human Services.

(d) I find this plan is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203 (C.52:14C-2). In addition to the reasons set forth above, this Plan will result in increased efficiency due to economies of scale, and also will result in greater coordination and improved functioning of the State's services offered to people with disabilities and their families. Further, this Plan will streamline State government for the benefit of all New Jersey citizens.

2. All records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to DMAHS for the purposes of administering the aforementioned functions, will be transferred to the Division of Disability Services as constituted in the Department of Human Services.

3. Whenever in P.L.1999, c.91 (C.30:6E-1 et seq.), or any of the laws referred to in paragraph 1(c), or in any rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the Office of Disability Services in the Department of Human Services or to the Office of Disability Services in the Department of Human Services, the same shall mean the Division of Disability Services in the Department of Human Services.

4. All acts and parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

5. Unless otherwise specified in this Plan, all transfers directed by this Plan shall be effected pursuant to the State Agency Transfer Act, P.L. 1971, c.375 (C.52:14D-1 et seq.).

6. If any provision of this Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder are held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, which can be given effect without the invalid provisions or applications of the Plan, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

7. This Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Reorganization Plan was filed on March 8, 2001 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective on July 1, 2001, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution within 60 days of the issuance of the Plan, stating in substance that the Legislature does not favor this Plan.

PLEASE TAKE NOTICE that this 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 the heading of Reorganization Plans.

Filed March 8, 2001.

Effective July 1, 2001.

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(2559)

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Banking and Insurance, Department:

Domestic fraternal benefit societies, cost of Y2K examinations, up to \$60,000, Ch.194.

Battleship U.S.S. New Jersey Refurbishment and Visitors Center, \$3,500,000, Ch.382.

APPROPRIATIONS (Continued)

Community Affairs, Department:

East Greenwich Township grant for veterans' memorial, \$40,000, Ch.320.

Flood aid, additional, Bound Brook, \$2,000,000; Manville, \$1,320,000, Ch.425.

From "Urban and Rural Centers Unsafe Buildings Demolition Revolving Loan Fund," various demolition, disposal projects, \$8,498,674, Ch.426.

"Local Unit Electronic Technology Pilot Program and Study Act," \$150,000, Ch.30.

"Main Street New Jersey" program, amounts necessary on an annual basis, Ch.238.

National Association for Children with Autism, Inc., \$50,000, Ch.11.

"New Jersey Individual Development Account Program," \$2,000,000, Ch.93.

Corrections, Department.:

State Parole Board, \$685,000, Ch.141.

Domestic security preparedness, various anti-terrorism measures, \$8,950,000, Ch.246.

Education, Department:

Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs, \$250,000, Ch.343.

Community Relations Committee of the United Jewish Federation of Metrowest; \$30,000, Ch.452.

Lakewood School District, \$3,150,000, Ch.47.

Nebulizer purchases by schools, \$344,000, Ch.61.

Energy assistance programs, various departments and amounts, Ch.24.

Environmental Protection, Department:

Acquisition by local government units in central New Jersey of lands for recreation, conservation purposes, \$11,000,000, Ch.33; for projects in northern New Jersey, \$14,195,000, Ch.59; for various projects \$40,440,000, Ch.63; authorization for "urban aid" projects, Ch.64.

"Dam, Lake and Stream Project Fund," \$6,730,000, Ch.360.

From "Garden State Farmland Preservation Trust Fund" for projects in northern New Jersey, \$26,500,000, Ch.181; for southern New Jersey, \$10,600,000, Ch.182; for pinelands area, \$9,000,000, Ch.183; for purchase of development easements, \$12,886,000; Ch.184; various projects, \$21,014,000, Ch.185.

APPROPRIATIONS (Continued)

From "Garden State Green Acres Preservation Trust Fund," for acquisition, development of lands by State for recreation, conservation purposes, \$7,650,000, Ch.32; \$29,000,000, Ch.58; by State, \$58,000,000, Ch.174; by tax exempt nonprofit organizations, \$12,000,000, Ch.175; for additional projects in Sussex County, \$2,000,000, Ch.176; for acquisition of noncontaminated portions of Ciba Geigy lands for recreation, conservation purposes, \$15,000,000, Ch.444.

From "Garden State Historic Preservation Trust Fund," for projects in southern New Jersey, \$4,960,536, Ch.55; for projects in northern New Jersey, \$6,871,462.01, Ch.56; for various projects, \$502,201.99, Ch.57.

From Green Acres bond acts, various, grants, low-interest loans for acquisition, development of lands for recreation, conservation purposes, \$10,815,700, Ch.390.

From Green Acres bond funds, various, for local government open space acquisition, park development projects, various, \$66,298,000, Ch.170.

From "1995 New Jersey Coastal Blue Acres Trust Fund" for various coastal acquisition projects, \$1,086,158, Ch.389.

From various funds for local government units to develop lands for recreation, conservation purposes, \$12,789,000, Ch.180.

From various sources, for environmental infrastructure projects, Ch.222.

From "Water Supply Fund," for assessment of Kirkwood-Cohansey aquifer, \$5,500,000; for water resource studies, assessments in Cape May County, \$2,000,000, Ch.165.

Historic markers, restoration, replacement, \$25,000, Ch.440.

Lake Lily, Cape May Point, Cape May County, restoration, \$468,750, Ch.107.

Oak Tree Disease Survey, \$95,000, Ch.8.

Planning incentive projects in southern New Jersey \$24,000,000, Ch.171; for northern New Jersey, \$30,809,500, Ch.172; for "urban aid" local government open space acquisition projects, \$5,441,000, Ch.173.

"Private Well Testing Act," \$1,000,000, Ch.40.

Sussex county locations approved for certain recreation, conservation projects, \$1,000,000, Ch.42.

Health and Senior Services, Department:

Breast cancer public awareness campaign, \$90,000, Ch.196.

Division of Addiction Services for treatment of criminal offenders, \$1,570,000, Ch.243.

Friends of the Homeless Animals, Inc., \$45,000, Ch.108.

APPROPRIATIONS (Continued)

- Health care subsidy fund payments, Atlantic City Medical Center, \$750,000, Monmouth Medical Center, \$750,000, Ch.434.
- Health Research and Educational Trust of New Jersey - Breast Cancer Awareness Project, \$75,000, Ch.197.
- Managed Health Care Consumer Assistance Program, \$500,000, Ch.14.
- Office on Minority and Multicultural Health, \$1,500,000, Ch.205.
- Higher Education Student Assistance Authority for New Jersey World Trade Center Scholarship Fund, \$250,000, Ch.442.
- Human Services, Department:
 - CONTACT Hotline, \$5,000, Ch.97.
 - From Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund for community-based projects, various; \$38,695,000, Ch.121.
 - Hudson Cradle, \$350,000, Ch.66.
 - Low Income Home Energy Assistance Block Grant, \$16,900,000, Ch.100.
 - "New Jersey Hunger Prevention and Nutrition Assistance Program Act," up to \$5,000,000, Ch.62.
 - Regional child abuse treatment centers, \$1,000,000, Ch.363.
 - Somerset Hills School, \$500,000, Ch.400.
- Kinship legal guardianship program, various, \$2,737,716, Ch.250.
- Law and Public Safety, Department:
 - Election law enforcement, Gubernatorial Elections Fund; for primary in 2001, Ch.73.
 - Establishment of Internet sex offender registry, \$500,000, Ch.167.
 - New Jersey Racing Commission, \$6,000,000, Ch.383.
 - To fund extension of polling place hours, board members compensation increase, \$3,000,000, plus additional sums certified as necessary, Ch.245.
- Military and Veterans' Affairs, Department:
 - New Jersey Naval Militia Joint Command, \$150,000, Ch.28.
 - New Jersey World War II Veterans Memorial, \$1,000,000, Ch.449.
 - Veterans' outreach and assistance, study of veterans' needs, \$50,000, Ch.214.
- New Jersey Commerce and Economic Growth Commission, to Nutraceuticals Institute for establishment of program, certain; \$3,500,000, previous appropriation cancelled, Ch.428.
- New Jersey Commission on Programs for Gifted Students, \$5,000, Ch.335.
- New Jersey Health Data Commission, \$94,000, Ch.192.
- New Jersey Historic Trust, from "Garden State Historic Preservation Trust Fund," for various projects, \$1,056,120, Ch.432.

APPROPRIATIONS (Continued)

New Jersey Meadowlands Commission, closure, post-closure of sanitary landfill facilities, up to \$23,500,000, Ch.398.

New Jersey Racing Commission, for report on winter stabling; \$95,000, Ch.199.

New Jersey Water Supply Authority Round Valley Fund, \$350,000, Ch.82.

Privacy Study Commission, \$95,000, Ch.404.

Smart Gun Technology Development program, NJIT; \$500,000, Ch.46.

State Agriculture Development Committee:

From "Garden State Farmland Preservation Trust Fund" for projects in southern NJ, \$14,750,000, Ch.103; in northern NJ, \$14,900,000, Ch.104; planning incentive grants, farmland preservation, \$11,800,000, Ch.105.

From "1995 Farmland Preservation Fund," \$2,883,500, from "Garden State Farmland Preservation Trust," \$11,754,020; various projects, Ch.306.

State, Department:

Coordinating Committee on Youth, \$50,000, Ch.445.

New Jersey Institute of Technology, College Leadership New Jersey 2001; \$25,000, Ch.447.

Prepaid Higher Education Expense Board, \$250,000, Ch.262.

Rutgers College of Nursing, \$1,300,000, Ch.379.

Supplemental, for various purposes from general fund, \$31,539,500, Ch.54.

Supplemental, FY2001, various; \$57,080,000 from General Fund, \$36,998,500 from Property Tax Relief Fund, Ch.135.

Transportation, Department:

Four year digitized picture driver's license, \$1,500,000, Ch.391.

From "1996 Dredging and Containment Facility Fund," for dredging Port Jersey channel, \$101,300,000, Ch.337.

From "1999 Statewide Transportation and Local Bridge Fund," for various bridge projects, \$100,000,000; for transportation projects, \$45,000,000, Ch.239.

"Theodore J. Narozanick Highway," for route, directional signs, \$2,500, Ch.126.

Treasury, Department:

Primary election, 2001 deadlines; changed, funding for notices, county reimbursement, Ch.50.

AUTHORITIES

Authorities, municipal, certain, offering of incentive to waive State Health Benefits Program coverage for employees, certain; permitted, amends C.52:14-17.31a, Ch.189.

AUTHORITIES (Continued)

- Delaware River and Bay Authority, powers relative to economic development, certain; expanded, amends C.32:11E-1, Ch.414.
- Interlocal services agreements, certain, study of; required, Ch.157.
- Local unit, assumption of outstanding debt of dissolved authority; permitted, amends C.40A:5A-20 et al., Ch.29.
- New Jersey Sports and Exposition Authority, membership; changed, amends C.5:10-4, Ch.456.
- Sewerage, utilities authorities, change of name to water reclamation authorities, certain circumstances; permitted, C.40:14A-4.1 et al., amends C.40:14A-3 et al., Ch.123.
- Solid waste facility bonds, counties, certain, refinancing through New Jersey Economic Development Authority; authorized, C.34:1B-4.1, amends C.34:1B-3 et al., Ch.401.
- Transportation Trust Fund Authority, debt limit, refunding bonds; excluded, amends C.27:1B-9, Ch.258.

BANKING

- Banks used as custodians of State assets, law revised, C.52:18A-8.1a et al., amends C.52:18A-8.1 et al., Ch.286.
- Records retention by financial institutions, certain, laws concerning; revised, amends C.17:16W-2 et al., Ch.169.

BRIDGES

- County bridge commissions, certain, additional projects, powers; authorized, C.27:19-26.1 et seq., amends R.S.27:19-29 et al., Ch.301.
- "Ellis S. Vieser Memorial Bridge"; designated as U.S.Highway Rt.9 south over Raritan River, Ch.288.

CEMETERIES

- Crematorium, construction, operation, municipal approval; required, C.8A:3-14.2, Ch.439.

CENSUS

- Federal census of 2000, effective date, C.52:4-5, Ch.257.

CHILDREN

- Child abuse and neglect, county team, county advocacy center, staff representative; included, amends C.9:6-8.104, Ch.344.
- Child passenger restraint systems, booster seat, seat belts, laws concerning; revised, amends C.39:3-76.2a et al., repeals C.39:3-76.2b, Ch.244.
- Coordinating Committee on Youth; established, Ch.445.

CHILDREN (Continued)

- "Foster Parent Licensing Act," C.30:4C-27.3 et seq., Ch.419.
- Health care coverage pursuant to child support order, enforcement; required, amends C.2A:17-56.11 et al., Ch.188.
- Juvenile justice system, incorporation of balanced, restorative justice principles; provided, amends C.2A:4A-21 et al., Ch.408.
- Juvenile records, certain, access; expanded, victims' right to attend proceedings, certain; established, amends C.2A:4A-60 et al., Ch.407.
- Juvenile records in central registry, 24 hour availability to law enforcement agencies, certain; required, C.2A:4A-60.1, amends C.2A:4A-60, Ch.191.
- Kinship legal guardianship, establishes, C.3B:12A-1 et al., amends N.J.S.2B:2-1, Ch.250.
- Newborns, universal hearing screening; required, C.26:2-103.1 et seq., amends C.17:48E-35.10 et al., repeals C.26:2-101 et seq., Ch.373.
- Tattooing, body piercing for minors, parental consent; required, C.2C:40-21, Ch.190.
- The Emergency Management Assistance Compact Act, C.38A:20-4 and 38A:20-5, Ch.249.
- Youth Employment and After School Incentive Pilot Program; established, C.34:15F-12 et seq., Ch.446.

CIVIL ACTIONS

- "Drug Dealer Liability Act," C.2C:35B-1 et seq., Ch.114.
- "Health Care Carrier Accountability Act," C.2A:53A-30 et seq., amends C.26:2J-25, Ch.187.
- Liability of owners of land subject to public access easements, certain; limited, C.2A:42A-8.1, Ch.265.
- Malpractice actions against licensed persons, certain, affidavit, certain; required, amends C.2A:53A-26, Ch.372.
- "Structured Settlement Protection Act," C.2A:16-63 et seq., Ch.139.
- Surveyors, 10-year limitation on liability; exceptions, C.2A:14-1.3 et seq., amends C.2A:14-1.1, Ch.76.

CIVIL DEFENSE

- New Jersey Domestic Security Preparedness Act, C.App.A:9-64 et seq., Ch.246; sunset provisions, time for legislative response; clarified, amends C.App.A:9-77, Ch.455.
- The Emergency Management Assistance Compact Act, C.38A:20-4 and 38A:20-5, Ch.249.

CIVIL RIGHTS

American flag, discharge, discrimination against employees for displaying, liability on employers; imposed, C.10:5-12.6, Ch.385.
LAD violations, penalties, increased, amends C.10:5-14.1a, Ch.254.

CIVIL SERVICE

Layoff procedure; changed, amends N.J.S.11A:8-1 et seq., Ch.241.
State employee compensation plan, negotiation procedure; changed, amends N.J.S.11A:3-7, Ch.240.

COLLEGES AND UNIVERSITIES

County College Contracts Law; revised, certain, amends C.18A:64A-25.3 et al., Ch.281.
Governor's Council for Medical Research and Treatment of Infantile Autism, annual funding, C.30:6D-62.1, Ch.338.
"Law Enforcement Officers' Memorial Scholarship Act of 2000," C.18A:71B-24.1 et al., Ch.41.
National Guard member, tuition assistance; increased, credits for graduate study; permitted, amends C.18A:62-24 et seq., Ch.9.
New Jersey National Guard, requirements for tuition benefits; changed, reimbursement to institution; required, amends C.18A:62-24, Ch.427.
New Jersey Prepaid Higher Education Expense Program Act of 2001, C.18A:71B-64 et al., amends N.J.S.18A:71B-40 et al., Ch.262.
"New Jersey World Trade Center Scholarship Program Act," C.18A:71B-23.1 et seq., Ch.442.
Smoking on school grounds, certain; prohibited, amends C.26:3D-17 et al., Ch.226.
UMDNJ, HMO assessment liability, certain; exempt, C.17B:27A-12.1, amends C.17B:27A-2, Ch.349.

COMMERCE AND INDUSTRY

"New Jersey Marine Transportation System Act," C.27:1A-75 et seq., amends C.12:6B-3 et seq., Ch.429.
New Jersey Tourism Advisory Council, representative of Statewide association; added, amends C.34:1A-51, Ch.255.
"New Jersey Women's Micro-Business Credit Act," "qualified recipient" definition; changed, amends C.52:27D-445, Ch.34.
"Uniform Electronic Transactions Act," C.12A:12-1 et seq., repeals R.S.1:1-2.4, Ch.116.

COMMISSIONS

- Hackensack Meadowlands Development Commission, renamed New Jersey Meadowlands Commission, C.13:17-3.1, amends C.13:17-3, Ch.232.
- New Jersey Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs; created, C.18A:4-42 et seq., Ch.343.
- New Jersey Commission on Native American Affairs, renamed New Jersey Commission on American Indian Affairs, laws; revised, amends C.52:16A-53 et al., Ch.417.
- 9-1-1 Commission, membership; four legislators, nonvoting, advisory, amends C.52:17C-2, Ch.290.
- Privacy Study Commission, temporary; established, C.47:1A-5 et seq., amends C.47:1A-1 et al., repeals C.47:1A-2 et al., Ch.404.
- State Commission of Investigation; permanent, amends C.52:9M-1, Ch.369.

COMMUNICATIONS

- Computer crime, complaints regarding, 24-hour toll-free hotline; established, amends C.52:17B-193, Ch.334.
- Telecommunications service providers, BPU enforcement of FCC rules; required, C.56:8-89.1, amends C.56:8-89, Ch.330.

CONFLICTS OF INTEREST

- Restrictions on law practice relative to casinos or intermediary companies for certain associates of former members of the Judiciary; exception, amends C.52:13D-17.2, Ch.75.

CONSUMER AFFAIRS

- Consumer fraud, certain, definitions of person with a disability, senior citizen; revised, amends C.56:8-14.2, Ch.339.
- Consumer loans by licensed lenders; \$50,000 maximum, amends C.17:11C-2 et al., Ch.294.
- New home warranty security fund, law concerning; revised, C.46:3B-7.1 et seq., amends C.46:3B-2 et al., Ch.147.
- Sale at excessive price increase during emergencies, certain; prohibited, C.56:8-107 et seq., Ch.297.
- Ticket brokers, requirements of resale of tickets, certain circumstances; established, C.56:8-35.1 et seq., amends C.56:8-26 et al., Ch.394.
- "Uniform Electronic Transactions Act," C.12A:12-1 et seq., repeals R.S.1:1-2.4, Ch.116.

CORPORATIONS

- Corporate mergers, certain, without shareholder approval or right of dissent; permitted, amends N.J.S.14A:10-3 et al., Ch.193.
- Dissolved corporation, claims against shareholders after five years; barred, C.14A:12-13.1, Ch.231.
- Health service corporation, conversion to domestic stock insurer, foundation, board of directors, membership; clarified, amends C.17:48E-68, Ch.387.

CORRECTIONS

- Division of Parole constituted in the State Parole Board, laws; revised, C.30:4-123.47c, amends C.30:4-123.45 et al., Ch.79.
- "No Early Release Act," crimes included; specified, amends C.2C:43-7.2 et al., Ch.129.
- Parole board, membership; increased, temporary panels; permitted, amends C.30:4-123.47 et al., Ch.141.

COUNTIES

- Budget cap, exception for amounts for operation of solid waste reclamation facility; provided, C.40A:4-45.4b, Ch.348.
- Clerks, registers, sheriffs, surrogates, salaries; adjusted, fees, certain; changed, C.22A:4-8.1 et al., amends N.J.S.2B:14-3 et al., Ch.370.
- Contribution limits to first aid, ambulance, rescue squads, certain, by counties, municipalities; increased, amends R.S.40:5-2, Ch.403.
- County board of recreation commissioners, number of members permitted; increased, adoption of board seal; permitted, amends R.S.40:12-1 et al., Ch.102.
- County bridge commissions, certain, additional projects, powers; authorized, C.27:19-26.1 et seq., amends R.S.27:19-29 et al., Ch.301.
- Fifth, sixth class counties, population requirement; changed, amends N.J.S.40A:6-1, Ch.336.
- Interlocal services agreements, certain, study of; required, Ch.157.
- Local unit, assumption of outstanding debt of dissolved authority; permitted, amends C.40A:5A-20 et al., Ch.29.
- Mandates, requirements, procedures, certain; revised, C.52:13H-22 et al., amends R.S.39:4-8 et al., repeals N.J.S.40A:9-59, Ch.342.
- Office of register of deeds and mortgages, counties, certain; consolidated with office of county clerk, amends N.J.S.40A:9-80, Ch.52.
- Pedestrian right-of-way signs, in-street, installation by counties, municipalities, certain circumstances; permitted, amends R.S.39:4-8, Ch.119.

COUNTIES (Continued)

Sewerage, utilities authorities, change of name to water reclamation authorities, certain circumstances; permitted, C.40:14A-4.1 et al., amends C.40:14A-3 et al., Ch.123.

Snow removal funds, establishment; permitted, C.40A:4-62.1, Ch.138.

Solid waste facility bonds, counties, certain, refinancing through New Jersey Economic Development Authority; authorized, C.34:1B-4.1, amends C.34:1B-3 et al., Ch.401.

COURTS

Clerks, registers, sheriffs, surrogates, certain, salaries; adjusted, fees, certain; changed, C.22A:4-8.1 et al., amends N.J.S.2B:14-3 et al., Ch.370.

Force, use of by police officer, instruction of grand jury in elements of justification; required, C.2B:22-9, Ch.381.

Juror compensation; increased, amends C.22A:1-1.1 et al., Ch.38.

Juvenile justice system, incorporation of balanced, restorative justice principles; provided, amends C.2A:4A-21 et al., Ch.408.

Municipal court fines, unpaid, collection through comprehensive enforcement program; authorized, amends C.2B:19-2 et al., Ch.421.

"Probation Officer Community Safety Unit," established, regulated, C.2B:10A-1 et seq., amends N.J.S.2C:39-6, Ch.362.

School-based probation program, annual report by Administrative Director of the Courts; required, access to pupil records; provided, C.2A:12-5.1 et seq., Ch.406.

Special civil part, fees of court officers on reinstated judgments, settlements; due, amends C.22A:2-37.2, Ch.275.

CRIMES AND OFFENSES

Animal cruelty, certain, fourth degree crime, counseling for juvenile offenders, certain; required, amends R.S.4:22-17 et al., Ch.229.

Assault on corrections, law enforcement employees by inmates, sentence imposed to run consecutively to other sentences, amends N.J.S.2C:44-5, Ch.16.

Bias intimidation, crime; established, N.J.S.2C:16-1, amends N.J.S.2C:12-1 et al., Ch.443.

Computer crime, complaints regarding, 24-hour toll-free hotline; established, amends C.52:17B-193, Ch.334.

Domestic violence offenders, civil penalty; imposed, Domestic Violence Victims' Fund; established, C.2C:25-29.1 et al., Ch.195.

Driving with suspended license, penalty for causing death or injury; increased, C.2C:40-22, amends R.S.39:3-40, Ch.213.

CRIMES AND OFFENSES (Continued)

- Eluding law enforcement officer, causing death of another; specified as aggravated manslaughter, amends N.J.S.2C:11-4, Ch.412.
- Endangering welfare of children, technical reference corrections, amends N.J.S.2C:24-4, Ch.291.
- Firearms offenses, certain, mandatory five-year prison term, certain circumstances; required, amends C.2C:39-7, Ch.216.
- Internet, electronic communication devices, use for harassment, stalking; criminalized, amends N.J.S.2C:1-14 et al., Ch.220
- Juvenile records, certain, access; expanded, victims' right to attend proceedings, certain; established, amends C.2A:4A-60 et al., Ch.407.
- Luring, enticing a child, provisions concerning; clarified, amends C.2C:13-6, Ch.233.
- Motor vehicle insurance card, fraudulent, penalty; increased, amends C.2C:21-2.3, Ch.124.
- "No Early Release Act," crimes included; specified, amends C.2C:43-7.2 et al., Ch.129.
- Possession of forged, altered retail sales receipts, universal product code labels, counterfeit checks; offense created, forgery statute; clarified, C.2C:21-2.4, amends N.J.S.2C:21-1, Ch.110.
- Property boundaries, use of non-fence materials for marking; prohibited, C.2C:40-20, amends R.S.40:48-1, Ch.36.
- Railroads, offenses involving damage of property, interference with transportation; grades of offenses, amends C.2A:53A-16 et al., repeals R.S.48:12-167, Ch.413.
- Sex offender Internet registry; established, C.2C:7-12 et seq., Ch.167.
- Sex offender registry, removal of certain offenders; prohibited, amends C.2C:7-2, Ch.392.
- Sex offenses, certain, additional penalty for "Statewide Sexual Assault Nurse Examiner Program Fund," C.2C:43-3.6 et al., amends C.2A:84A-22.14 et al., repeals P.L.1997, c.328, Ch.81.
- Sexual assault by certain persons involving minors; statutes modified, amends N.J.S.2C:14-2, Ch.60.
- Simple assault against law enforcement officer, certain circumstances; crime upgraded, amends N.J.S.2C:12-1, Ch.215.
- Tampering with electronic device installed in patrol vehicle, fourth degree crime; offense created, amends N.J.S.2C:28-7, Ch.219.

CRIMINAL PROCEDURE

- DNA testing, post-conviction; profile, retaining, use in other investigations, prosecutions; permitted, C.2A:84A-32a et al., Ch.377.

CRIMINAL PROCEDURE (Continued)

- Force, use of by police officer, instruction of grand jury in elements of justification; required, C.2B:22-9, Ch.381.
- Restraining orders for drug offenders, certain, laws governing; revised, C.2C:35-5.9 et seq., amends C.2C:35-5.6 et seq., Ch.365.
- Statewide Sexual Assault Nurse Examiner Program; established, C.52:4B-50 et al., amends C.2A:84A-22.14 et al., repeals P.L.1997, c.328, Ch.81.
- Time limit on certain prosecutions; tolled for collection of certain physical evidence, amends N.J.S.2C:1-6, Ch.308.

DOMESTIC RELATIONS

- Domestic violence offenders, civil penalty; imposed, Domestic Violence Victims' Fund; established, C.2C:25-29.1 et al., Ch.195.
- Health care coverage pursuant to child support order, enforcement; required, amends C.2A:17-56.11 et al., Ch.188.
- Judges, former, certain, performance of marriages; permitted, amends R.S.37:1-13, Ch.143.
- Kinship legal guardianship, establishes, C.3B:12A-1 et al., amends N.J.S.2B:2-1, Ch.250.

ELECTIONS

- Contributions to various political committees, certain; limits revised, amends R.S.19:34-45 et al., Ch.384.
- Gubernatorial candidates, certain disclosures; required for eligibility for public financing, C.19:44A-27.1 et seq., Ch.20.
- Members of election boards, increase of maximum daily, hourly compensation; permitted, amends R.S.19:45-6, Ch.15.
- Nominating petitions for offices, certain, deadline for filing; spacing on referenda petitions; changed, C.1:5-3, amends R.S.19:23-14 et al., Ch.211.
- Organizational dates for 2001 for State, county, municipal political party committees; changed, Ch.125.
- Polling place hours, certain elections; extended, board members compensation; increased, C.19:45-6.2, amends R.S.19:2-1 et al., Ch.245.
- Primary election date for 2001, requirements for gubernatorial candidates; changed, C.19:44A-33.1, Ch.73.
- Primary election, 2001, petition filing deadline for legislative candidates; changed, Ch.50.
- Regional school boards, provision of certain budget information to voters; permitted, amends N.J.S.18A:13-17 et al., Ch.26.

ELECTIONS (Continued)

School elections, special, notice, holding on certain days; required, amends C.19:60-2, Ch.98.

Stalking victims, certain, registration to vote without disclosure of street address; permitted, amends C.19:31-3.2 et al., Ch.177.

ENVIRONMENT

Application fees, CAFRA, waterfront development permits; maximum, certain, amends C.13:1D-33, Ch.314.

Coastal Area Facility Review Act, enclosure of establishments offering dining, food services and beverages, certain; exemption from permit requirements, amends C.13:19-5.2, Ch.418.

Landfill site closures, redevelopment, Pinelands municipal landfill; included, amends C.13:1E-116.2, Ch.311.

Littering, penalties; increased, amends C.13:1E-99.3, Ch.78.

New Jersey Environmental Infrastructure Trust:

Expenditures, certain; authorized, Ch.224.

Law revised, amends C.58:11B-3 et al., Ch.223.

Open space, farmland preservation acquisitions, appraisal process; revised, amends C.13:8C-26 et al., Ch.315.

Recreation, conservation, land acquisitions, joint, by municipalities, MUAs, school districts; permitted, C.40:14B-20.3 et al., Ch.283.

Reforestation of land by State entities; laws changed, C.13:1L-14.4, amends C.13:1L-14.2 et seq., Ch.10.

Remediation ordinances, municipal, not applicable to remediations conducted under oversight of Department of Environmental Protection, C.40:48-2.57, Ch.179.

Sanitary landfill facilities, Bergen County, certain, remediation, debt defeasance, C.13:1E-109.1 et al., amends C.58:10B-31, Ch.398.

Site cleanups, statute of limitations; established, extended, liability for purchasers; clarified, C.58:10B-17.1 et al., amends C.58:10-23.11b et al., Ch.154.

Spruce Run, Round Valley reservoirs, release of water; authorized, C.58:1B-9.1 et al., amends R.S.58:4-1 et al., Ch.82.

Underground storage tanks, facilities, liability, certain circumstances; clarified, amends C.58:10-23.11g6, Ch.145.

Underground storage tanks, implementation of cap on certain grants; delayed, reimbursement grants for remediation costs; permitted, amends C.58:10A-37.5 et al., Ch.22.

Underground storage tank removal or closure, cleanup grants, certain; provided, amends C.58:10B-6, Ch.70.

ESTATES

- Assets, certain, protection from creditors; provided, qualifying trusts subject to punitive damage awards, certain, amends R.S.25:2-1, Ch.153.
- Intestate estates, settlement, missing, unknown heirs; modified, C.3B:5-5.1, amends N.J.S.3B:23-19 et al., repeals N.J.S.3B:5-5 et al., Ch.109.
- Minors, proceeds, certain; deposit in FDIC insured accounts or CDS, amends N.J.S.3B:15-16, Ch.287.
- Presumption of death, exposure to specific catastrophic event, certain; established, C.52:17B-4b, amends N.J.S.3B:27-1 et al., Ch. 247.
- Trust funds for pets, validity; recognized, C.3B:11-38, Ch.144.
- "Uniform Principal and Income Act of 2001," C.3B:19B-1 et seq., repeals N.J.S.3B:19A-1 et seq., Ch.212.

EXECUTIVE ORDERS

- Advisory Council to Promote the Profession of Nursing in New Jersey; established, No.139, additional members, No.141; non-voting status, No.142.
- Assemblyman Alan M. Augustine; death commemorated, No.129.
- Garden State Parkway Congestion Relief Plan; preparation directed, No.128.
- Governor's Task Force on Public Health Emergency Planning; established, No.140.
- Liberty State Park, special events, Division of Parks and Forestry, sole agency for authorization, approval, scheduling, No.138.
- Newborn Screening Annual Review Committee; created, No. 126.
- New Jersey State employees called to active duty during Operation Noble Eagle, related operations, seniority, benefits; preserved, No.133.
- New Jersey World Trade Center Victims Memorial Commission; created, No.134.
- Office of Recovery and Victim Assistance; created, No.132.
- Racial profiling, practice examined, Institute to Explore Policing in a Modern Democratic Society; established, No.127.
- School facilities project, certain, exemption from requirements of Executive Order No.215 (Kean); provided, No.137.
- State employees, November 23, 2001; granted as a day off, No.135; December 24, 2001; granted as a day off, No.136.
- State of emergency, Morris county, relative to June 22, 2001 accident and control, direction of vehicular traffic, No.130.
- State of emergency, relative to terrorist attacks of September 11, 2001; declared, No.131.
- State of emergency, severe weather caused by winter storm, Statewide; declared, No.124; terminated, No.125.

FIRE SAFETY

- Emblem identifying persons with disabilities, placement on residential dwelling; authorized, C.52:27D-25hh, Ch.453.
- Emergency Services Length of Service Award Program, credit, penalties, revised, C.40A:14-194.1, amends C.40A:14-188, Ch.272.
- Fire association members, certain, paid leave for conventions; required, amends N.J.S.11A:6-10 et al., Ch.309.
- Fire protection equipment, install, service, repair, inspect, maintain by contractors, certification; required, C.52:27D-25n et al., amends C.45:5A-18 et al., Ch.289.
- Fire safety commission, membership, certain; increased, amends C.52:27D-25e, Ch.204.
- Firefighters, appointment; age qualification, certain, C.40A:14-12.4, Ch.279.

FIRST AID AND RESCUE SQUADS

- Contribution limits to first aid, ambulance, rescue squads, certain, by counties, municipalities; increased, amends R.S.40:5-2, Ch.403.
- Emergency Services Length of Service Award Program, credit, penalties, revised, C.40A:14-194.1, amends C.40A:14-188, Ch.272.
- Firefighters, appointment; age qualification, certain, C.40A:14-12.4, Ch.279.

FISH AND GAME

- Deer, dead transport, closed vehicle; permitted, amends R.S.23:4-47, repeals C.23:4-47.1, Ch.261.
- Menhaden, taking of in certain waters; prohibited, amends R.S.23:3-51, Ch.359.

GAMES AND GAMBLING

- "Casino Reinvestment Development Authority Urban Revitalization Act," C.5:12-173.9 et seq., amends C.5:12-144.1 et al., Ch.221.
- Casino simulcasting of horse races, laws, certain; revised, handicapping contests; authorized, C.5:5-63.2 et al., Ch.198.
- Casinos, list for self-excluded persons, request by problem gamblers for placement; permitted, C.5:12-71.2 et seq., Ch.39.
- "Off-Track and Account Wagering Act," C.5:5-127 et al., amends C.5:5-125 et al., Ch.199.

HANDICAPPED PERSONS

- Emblem identifying persons with disabilities, placement on residential dwelling; authorized, C.52:27D-25hh, Ch.453.

HANDICAPPED PERSONS (Continued)

New Jersey Adult Family Care Act, caregivers; licensed, C.26:2Y-1 et seq., amends C.40:55D-66.1 et al., Ch.304.

Traumatic Brain Injury Fund, New Jersey Advisory Council on Traumatic Brain Injury; established, C.30:6F-1 et seq., amends C.39:3-8.2, Ch.332.

HEALTH

Alcohol Treatment Programs Fund; created, C.26:2B-9.2 et seq., amends C.34:1B-21.12, Ch.48.

Automated external defibrillators, placement in State buildings, certain, guidelines; required, C.2A:62A-28 et seq., Ch.375.

Breast and cervical cancer-related treatment, certain, coverage by Medicaid; provided, amends C.30:4D-3 et al., Ch.186.

Breast cancer public awareness campaign; established, C.26:2W-3, Ch.196.

Governor's Council for Medical Research and Treatment of Infantile Autism, annual funding, C.30:6D-62.1, Ch.338.

Health benefits plans, certain, full payment to in-network facilities using out-of-network practitioner as provider; required, C.26:2S-6.1 et al., amends C.26:2S-5, Ch.367.

"Health Care Carrier Accountability Act," C.2A:53A-30 et seq., amends C.26:2J-25, Ch.187.

Health care facility employees, hourly, overtime, certain; prohibited, C.34:11-56a31 et seq., Ch.300.

Health coverage, colorectal cancer screening; benefits required, C.17:48-6y et al., Ch.295.

Health coverage, infant formulas, certain; provided, C.17:48-6z et al., amends C.17B:27A-7 et al., Ch.361.

"Health Data Commission Act," C.52:9YY et seq., Ch.192.

Health insurers, coverage for expenses, certain, incurred due to diagnosis, treatment of infertility; required, C.17:48-6x et al., Ch.236.

Health Maintenance Organizations, reserve standards, insurance holding company regulations; law revised, amends C.26:2J-25 et al., Ch.2.

Hepatitis C, programs, reporting requirements; established, C.26:2T-5 et seq., amends C.26:2T-1, Ch.357.

Independent Health Care Appeals Program, decisions relative to carriers; binding, amends C.26:2S-12, Ch.1.

"Leonard Cohen's Law," transfer of hospital patients, complete discharge summary accompanying; required, C.26:2H-12.9b et seq., Ch.207.

Managed care plans, acceptance of universal physician application; required, C.26:2S-7.1 et seq., Ch.88.

Managed Health Care Consumer Assistance Program; created, C.26:2S-19 et seq., amends C.26:2S-5, Ch.14.

HEALTH (Continued)

- New Jersey Prostate Cancer Research Fund, established; funding, grants, C.52:9U-6.2 et al., Ch.305.
- Newborns, universal hearing screening; required, C.26:2-103.1 et seq., amends C.17:48E-35.10 et al., repeals C.26:2-101 et seq., Ch.373.
- Nurse Multistate Licensure Compact, joined, C.45:11A-1 et seq., Ch.340.
- Office on Minority Health renamed Office on Minority and Multicultural Health, responsibilities; increased, amends C.26:2-160 et al., Ch.205.
- Office on Women's Health; established, C.26:1A-123 et seq., Ch.376.
- Ombudsman for the Institutionalized Elderly, disclosure to family members of results of certain investigations; required, C.52:27G-7.3, amends C.52:27G-7.2, Ch.7.
- Organ donations, procedure; changed, amends C.26:6-58.1 et al., repeals C.26:6-58.7 et al., Ch.87.
- Organized delivery systems, disclosure of patient information, certain, for research purposes; permitted, amends C.17:48H-30, Ch.112.
- Pap smears, coverage requirements; clarified, identical coverage under State Health Benefits Program; required, C.52:14-17.29f, amends C.17:48E-35.12 et al., Ch.227.
- Physicians, dentists, joint negotiations with carriers; permitted, C.52:17B-196 et seq., Ch.371.
- Self-funded multiple employer welfare arrangements; regulated, C.17B:27C-1 et seq., Ch.352.
- Standardized pharmacy identification cards, issuance by health insurers, certain; required, C.17B:30-35 et seq., Ch.200.
- State cancer registry, inclusion of data within one year of receipt; required, amends C.26:2-105 et seq., Ch.99.
- Tattooing, body piercing for minors, parental consent; required, C.2C:40-21, Ch.190.

HIGHWAYS

- "Edwin L. Ward, Sr. Memorial Highway"; designated, J.R.4.
- "Ellis S. Vieser Memorial Bridge"; designated as U.S.Highway Rt.9 south over Raritan River, Ch.288.
- "James Duffy Interchange," designated, J.R.7.
- Litter pickup and removal plan for highways maintained by the Department of Transportation; required, Ch.77.
- Littering, penalties; increased, amends C.13:1E-99.3, Ch.78.
- Task Force on Driver Distractions and Highway Safety, created, J.R.9.
- "Theodore J. Narozanick Highway," portion of Rt.33; designated, Ch.126.
- "Thomas E. Dunn Memorial Highway"; designated, J.R.3.

HIGHWAYS (Continued)

Trucks, truck-trailer combinations, certain; prohibited from using certain portions of State Highway Route No. 29, C.39:4-197.16 et seq., Ch.45.

HISTORICAL AFFAIRS

Historic buildings, structures, preservation on preserved farmland, criteria; provided, "historic building or structure"; defined, C.13:8C-40.1 et seq., amends C.4:1C-31 et al., Ch.405.

"New Jersey Transportation Heritage Center," location, site; provided, C.28:2-32 et al., Ch.113.

HOLIDAYS

"Child Appreciation Month," May; designated, C.36:2-68, J.R.2.

"New Jersey Credit Union Day," third Thursday of October; designated, C.36:2-69, J.R.5.

"Patriots Day," third Monday in April; designated, C.36:2-70 et seq., J.R.6.

HOSPITALS

"Leonard Cohen's Law," transfer of hospital patients, complete discharge summary accompanying; required, C.26:2H-12.9b et seq., Ch.207.

Patients for non-emergency or elective procedures, payment as a condition; certain, authorized, amends C.26:2H-18.63, Ch.296.

Pediatric rehabilitation hospitals, Medicaid reimbursement methodology; revised, C.30:4D-7g et seq., Ch.393.

State hospitals, names; updated, amends R.S.30:1-7 et al., Ch.268.

HOUSING

Affordable housing, fair share, certification period; increased, C.52:27D-307.6, amends C.52:27D-307 et al., Ch.435.

Construction permits, duration, certain circumstances; limited, C.52:27D-131.1, amends C.52:27D-131, Ch.457.

Multiple dwelling, new; elevator required to accommodate ambulance cart, C.52:27D-123.14, Ch.263.

Zoning ordinances, affordable housing, amendment without approval of COAH, certain circumstances; permitted, amends C.52:27D-311, Ch.441.

HUMAN SERVICES

Assisted living facilities, certain, percentage of residents eligible for Medicaid; required, C.26:2H-12.16 et seq., Ch.234.

DYFS Staffing and Outcome Review Panel; established, additional positions, C.30:4C-3.1 et al, Ch.252.

HUMAN SERVICES (Continued)

- "Foster Parent Licensing Act," C.30:4C-27.3 et seq., Ch.419.
- Health care services at Newark schools, certain, contract for Medicaid reimbursement; conditions required, C.30:4D-17.19 et seq., Ch.333.
- Institutionalized individuals, certain, children, victims; exempt from payment of maintenance costs, amends R.S.30:4-66 et al., Ch.208.
- Medicaid, NJKidCare, period for eligibility; extended to maximum, amends C.30:4D-3 et al., Ch.122.
- "New Jersey Hunger Prevention and Nutrition Assistance Program Act," C.30:1A-7 et seq., Ch.62.
- "New Jersey Individual Development Account Act," C.44:10-86 et seq., Ch.93.
- Ombudsman for the Institutionalized Elderly, disclosure to family members of results of certain investigations; required, C.52:27G-7.3, amends C.52:27G-7.2, Ch.7.
- "Senior Gold Prescription Discount Act," C.30:4D-43 et seq., Ch.96
- Traumatic Brain Injury Fund, New Jersey Advisory Council on Traumatic Brain Injury; established, C.30:6F-1 et seq., amends C.39:3-8.2, Ch.332.

INSURANCE

- Breast and cervical cancer-related treatment, certain, coverage by Medicaid; provided, amends C.30:4D-3 et al., Ch.186.
- Domestic fraternal benefit society, exams as to Y2K readiness, expenses limited, Ch.194.
- Health benefits plans, billing services, third party administrators; licensure, certification, C.17B:27B-1 et seq., Ch.267.
- Health benefits plans, certain, full payment to in-network facilities using out-of-network practitioner as provider; required, C.26:2S-6.1 et al., amends C.26:2S-5, Ch.367.
- "Health Care Carrier Accountability Act," C.2A:53A-30 et seq., amends C.26:2J-25, Ch.187.
- Health carrier, individual coverage program; member loss sharing formula, C.17B:27A-12.1, amends C.17B:27A-2, Ch.349.
- Health coverage, colorectal cancer screening; benefits required, C.17:48-6y et al., Ch.295.
- Health coverage, infant formulas, certain; provided, C.17:48-6z et al., amends C.17B:27A-7 et al., Ch.361.
- Health insurance, individual benefits plan carriers, offering of plans, certain; required, C.17B:27A-4.4 et al., Ch.368.
- Health insurers, coverage for expenses, certain, incurred due to diagnosis, treatment of infertility; required, C.17:48-6x et al., Ch.236.

INSURANCE (Continued)

Health service corporation:

Conversion to domestic stock insurer, foundation board of directors, membership; clarified, amends C.17:48E-68, Ch.387.

Conversion to for-profit health insurer, procedure; provided, C.17:48E-49 et seq., amends C.17B:27A-10 et al., Ch.131.

Health, small employer benefits plan; credit for participation in other plans, amends C.17B:27A-24, Ch.346.

Homeowners Insurance Availability Advisory Committee; established, Ch.89.

Homeowners' insurance, policy language on applicability of hurricane deductibles, expedited rate filing procedure, consumer information brochure, certain; provided, C.17:36-5.33 et seq., Ch.409.

Homeowner's policy, inquiries concerning not categorized as claims, C.17:29B-4.1, Ch.235.

Independent Health Care Appeals Program, decisions relative to carriers; binding, amends C.26:2S-12, Ch.1.

Life insurance proceeds, prompt payment, interest; time limits, C.17B:27-10.1, amends N.J.S.17B:25-11 et al., Ch.91.

Life insurers, use of forms approved in other states, certain circumstances; permitted, C.17B:25-18.4 et seq., Ch.237.

Managed care plans, acceptance of universal physician application; required, C.26:2S-7.1 et seq., Ch.88.

Municipal court complaint as precondition for payment of auto claims by insurers, certain; prohibited, amends C.17:29B-4, Ch.168.

"New Jersey Insurance Producer Licensing Act of 2001," C.17:22A-26 et seq., amends C.17:22-6.42 et al., repeals C.17:22A-1 et al., Ch.210.

Organized delivery systems, applicability for prompt payment and claims payment enforcement laws; provided, C.17:48H-33.1 et seq., amends C.17B:30-26, Ch.67.

Pap smears, coverage requirements; clarified, identical coverage under State Health Benefits Program; required, C.52:14-17.29f, amends C.17:48E-35.12 et al., Ch.227.

Physicians, dentists, joint negotiations with carriers; permitted, C.52:17B-196 et seq., Ch.371.

Small employer health benefits purchasing alliances, establishment; permitted, C.17B:27A-25.1 et seq., amends C.17B:27A-25, Ch.225.

Standardized pharmacy identification cards, issuance by health insurers, certain; required, C.17B:30-35 et seq., Ch.200.

INTERSTATE RELATIONS

Delaware River and Bay Authority, powers relative to economic development, certain; expanded, amends C.32:11E-1, Ch.414.
"Uniform Sales and Use Tax Administration Act," C.54:32B-44 et seq., Ch.431.

JOINT RESOLUTIONS

"Child Appreciation Month," May; designated, C.36:2-68, J.R.2.
"Edwin L. Ward, Sr. Memorial Highway"; designated, J.R.4.
"James Duffy Interchange," designated, J.R.7.
"New Jersey Credit Union Day," third Thursday of October; designated, C.36:2-69, J.R.5.
"Patriots Day," third Monday in April; designated, C.36:2-70 et seq., J.R.6.
"Reverend S. Howard Woodson Way," portion of Calhoun Street in Trenton; designated, J.R.1.
Task Force on Driver Distractions and Highway Safety, created, J.R.9.
Terrorist attack of September 11, 2001, condemnation; actions by Department of Banking and Insurance, recommended, approved, J.R.8.
"Thomas E. Dunn Memorial Highway"; designated, J.R.3.

JUDGES

Superior Court judgeships; increased, amends N.J.S.2B:2-1, Ch.243.

LABOR

Employee leasing companies, agreements; regulated, C.34:8-67 et seq., Ch.260; employing unit operating as a cooperative under certain federal law; exempt, amends C.34:8-75, Ch.282.
Employment, training services, laws concerning; revised, C.34:15D-21 et seq., amends C.34:15B-35 et al., Ch.152.
Health care facility employees, hourly, overtime, certain; prohibited, C.34:11-56a31 et seq., Ch.300.
Self-funded multiple employer welfare arrangements; regulated, C.17B:27C-1 et seq., Ch.352.
Temporary disability benefits for employment based in another state, reciprocal agreements; authorized, C.43:21-45.1, Ch.451.
Youth Employment and After School Incentive Pilot Program; established, C.34:15F-12 et seq., Ch.446.

LANDLORD AND TENANT

Commercial property, abandoned, landlord adherence to lease terms controlling disposal of abandoned tenant property; required, amends C.2A:18-72, Ch.51.

LANDLORD AND TENANT (Continued)

Landlord registration filings, designee to receive; permitted to municipal clerk, amends C.46:8-28 et al., Ch.264.

Notice of location in flood zone, landlord to tenant; required, C.46:8-50, Ch.313.

Payment of rent, five-day grace period for governmental assistance recipients, certain; permitted, amends C.2A:42-6.1 et al., Ch.142.

Seasonal rentals, certain, conditions requiring bond or security from landlord; revised, amends C.40:48-2.12q, Ch.71.

LIBRARIES

Grant funds, application by association libraries; permitted, amends C.18A:74-24, Ch.148.

State Library, transfer to Thomas Edison State College; effected, C.18A:73-42.1 et al., amends N.J.S.2A:12-6 et al., repeals C.18A:73-29 et al., Ch.137.

MILITARY AND VETERANS

Military leave benefits, public officers, employees; clarified, C.52:13H-2.1, amends R.S.38:23-1 et al., repeals C.38:23-1.1 et seq., Ch.351.

National Guard member, tuition assistance; increased, credits for graduate study; permitted, amends C.18A:62-24 et seq., Ch.9.

New Jersey Aid National Guard, adjutant general, rank of major general; permitted, amends C.38A:3-5.1, Ch.317.

Operation Recognition, State-endorsed high school diplomas to veterans, certain; established, C.18A:7C-4.1, Ch.302.

Poppies, sale to benefit veterans, period of sale; extended, amends C.38:25A-4, Ch.31.

TPAF, PERS, PFRS, veterans' status for participants in Somalia, Bosnia, Herzegovina, certain; provided, C.43:15A-24b et al., amends N.J.S.18A:66-2 et al., Ch.128.

Veterans' benefits extended to participants in Lebanon Crisis of 1958, certain, C.43:15A-24a, amends N.J.S.11A:5-1 et al., Ch.127.

MOTOR VEHICLES

Amateur radio operators, license plates identifying, display; fee increased, amends C.39:3-27.5 et al., Ch.280.

Auto body repair facilities, licensing provisions; changed, C.39:13-2.1 et seq., amends C.39:13-1 et al., Ch.53.

"Be An Organ Donor" license plates; established, C.39:3-27.127 et seq., amends C.54A:9-25.17 et seq., Ch.164.

MOTOR VEHICLES (Continued)

- Child passenger restraint systems, booster seat, seat belts, laws concerning; revised, amends C.39:3-76.2a et al., repeals C.39:3-76.2b, Ch.244.
- Drivers' licenses, graduated, program; modified, motorcycle permits, laws; revised, drivers' schools, guidelines; established, C.39:12-4.1 et al., amends C.27:5F-41 et al., Ch.420.
- Driver's licenses, identification cards, digitized pictures, law; revised, C.39:3-10f4 et al., amends R.S.39:3-10 et al., Ch.391.
- Driving while intoxicated, impoundment of vehicles of offenders, issuance of responsibility warnings to persons assuming custody of offender; required, C.39:4-50a et seq., Ch.69.
- Driving with suspended license, penalty for causing death or injury; increased, C.2C:40-22, amends R.S.39:3-40, Ch.213.
- Drunk driver visitation program; created, amends R.S.39:4-50, Ch.12.
- Duplicate personalized license plates; permitted, C.39:3-33b, Ch.35.
- Electric personal assistive mobility devices; defined, operation regulated, C.39:4-14.10 et seq., amends C.39:4-10.8, Ch.430.
- Law enforcement officer memorial license plates; authorized, C.39:3-27.123 et al., Ch.41.
- License plate to promote agriculture; authorized, C.39:3-27.116 et seq., Ch.13.
- Limousines, laws; revised, "black car"; defined, regulated, C.48:16-18.1 et al., amends R.S.33:1-1 et al., Ch.416.
- Motor vehicle surcharges, certain, allocated for alcohol treatment programs, C.26:2B-9.2 et seq., amends C.34:1B-21.12, Ch.48.
- Pedestrian right-of-way signs, in-street, installation by counties, municipalities, certain circumstances; permitted, amends R.S.39:4-8, Ch.119.
- Records, licenses, registrations; maintenance, preservation; statute updated, amends R.S.39:3-28, Ch.276.
- Shade tree, community forest preservation license plates, for commercial vehicles; created, amends C.39:3-27.79, Ch.436.
- Traffic accidents, cell phone use, involvement, reporting; required, C.27:1A-5.19, amends R.S.39:4-131, Ch.161.
- Trucks, truck-trailer combinations, certain; prohibited from using certain portions of State Highway Route No. 29, C.39:4-197.16 et seq., Ch.45.

MUNICIPALITIES

- Apartment buildings, complexes, municipal trash collection; provided, C.40:66-1.2 et seq., amends C.40A:4-45.3, Ch.25.
- "Area in need of rehabilitation," for purposes of Local Redevelopment and Housing Law, older housing stock, infrastructure; redefined, amends C.40A:12A-14, Ch.155.

MUNICIPALITIES (Continued)

- Authorities, municipal, certain, offering of incentive to waive State Health Benefits Program coverage for employees, certain; permitted, amends C.52:14-17.31a, Ch.189.
- "Casino Reinvestment Development Authority Urban Revitalization Act," C.5:12-173.9 et seq., amends C.5:12-144.1 et al., Ch.221.
- Cliffside Park, Borough, police appointment, certain, Ch.423.
- Construction permits, duration, certain circumstances; limited, C.52:27D-131.1, amends C.52:27D-131, Ch.457.
- Contribution limits to first aid, ambulance, rescue squads, certain, by counties, municipalities; increased, amends R.S.40:5-2, Ch.403.
- Crematorium, construction, operation, municipal approval; required, C.8A:3-14.2, Ch.439.
- Electronic tax lien sales by municipalities, establishment of procedures; required, C.54:5-19.1, Ch.160.
- Interlocal services agreements, certain, study of; required, Ch.157.
- Landfill site closures, redevelopment, Pinelands municipal landfill; included, amends C.13:1E-116.2, Ch.311.
- Local unit, assumption of outstanding debt of dissolved authority; permitted, amends C.40A:5A-20 et al., Ch.29.
- "Main Street New Jersey Program"; created in Department of Community Affairs, C.52:27D-452 et seq., Ch.238.
- Mandates, requirements, procedures, certain; revised, C.52:13H-22 et al., amends R.S.39:4-8 et al., repeals N.J.S.40A:9-59, Ch.342.
- Mayor, council, term of office in municipalities, certain; increased, amends N.J.S.40A:9-130 et al., Ch.118.
- Multiple dwellings, owners, certain, emergency evacuation plans; required by ordinance, C.52:27D-224.1, Ch.80.
- Ordinances, violation, maximum for first offense; increased, amends R.S.40:49-5, Ch.274.
- Pedestrian right-of-way signs, in-street, installation by counties, municipalities, certain circumstances; permitted, amends R.S.39:4-8, Ch.119.
- Property boundaries, use of non-fence materials for marking; prohibited, C.2C:40-20, amends R.S.40:48-1, Ch.36.
- Receipts from miscellaneous revenue, direct distribution of receipts to real property taxpayers; permitted, C.40A:4-27.3, Ch.140.
- Recreation, conservation, land acquisitions, joint, by municipalities, MUAs, school districts; permitted, C.40:14B-20.3 et al., Ch.283.
- Redevelopment Area Bond Financing Law, C.40A:12A-64 et seq.; Revenue Allocation District Financing Act, C.52:27D-459 et seq., amends C.40A:12A-29 et seq., Ch.310.

MUNICIPALITIES (Continued)

Remediation ordinances, municipal, not applicable to remediations conducted under oversight of Department of Environmental Protection, C.40:48-2.57, Ch.179.

"Reverend S. Howard Woodson Way," portion of Calhoun Street in Trenton; designated, J.R.1.

Seasonal rentals, certain, conditions requiring bond or security from landlord; revised, amends C.40:48-2.12q, Ch.71.

Sewerage, utilities authorities, change of name to water reclamation authorities, certain circumstances; permitted, C.40:14A-4.1 et al., amends C.40:14A-3 et al., Ch.123.

Snow removal funds, establishment; permitted, C.40A:4-62.1, Ch.138.

Solid waste, recycling collection, limitation to certain hours; regulation by ordinance, C.40:66-1.6, amends R.S.40:66-1 et al., Ch.92.

South Hackensack, Township, police appointment, certain, Ch.422.

Urban enterprise zones, extended, certain; added UEZs; designation of UEZ-impacted business districts, C.52:27H-66.2 et seq., amends C.52:27H-61 et al., Ch.347.

Zoning ordinances, affordable housing, amendment without approval of COAH, certain circumstances; permitted, amends C.52:27D-311, Ch.441.

Zoning permits, issuance by municipality within 10 business days; required, amends C.40:55D-18, Ch.49.

NURSING HOMES, ROOMING AND BOARDING HOUSES

Nursing home admission agreements, right to sue, clauses waiving; void, unenforceable, C.30:13-8.1, Ch.450.

PENSIONS AND RETIREMENT

Board of Education Employees' Pension Fund of Essex County; law revised, benefits; increased, C.18A:66-110.2, amends N.J.S.18A:66-97 et al., Ch.454.

Judicial Retirement System, optional contributory death benefit coverage, eligibility rules; changed, amends C.43:6A-17.1, Ch.74.

"Pension Cost Stabilization Act," local employer contributions to PFRS; reduced, amends C.43:16A-15, Ch.44.

PERS:

Prosecutors part; added, prescribed, C.43:15A-155 et seq., Ch.366.

Reemployment of retired member, compensation limit; increased, amends C.43:15A-57.2, Ch.278.

Retiree employed as college teacher in PERS, pension continued, amends C.43:15A-57.2, Ch.253.

PENSIONS AND RETIREMENT (Continued)

- Workers' compensation judges, part; established, C.43:15A-142 et seq., Ch.259.
- Police and Firemen's Retirement System:
 - Benefits provided to survivors, certain; enhanced, Ch.86.
 - Credit, full, for service of members who transfer from PERS, certain; provided, C.43:16A-3.14, amends C.43:16A-15, Ch.201.
 - Firefighter, rehired, certain, purchase of credit for layoff period, certain; permitted, C.43:16A-11.14, Ch.228.
 - Mortgage loans, interest rate formula; changed, amends C.43:16A-16.11, Ch.293.
 - Survivors, certain; pension benefit, certain, Ch.318.
- Public safety officers, certain, retirement benefits; increased, C.43:15A-100.1 et al., amends R.S.43:16-1 et al., Ch.4.
- Service credit, certain, transfer between PERS and TPAF; permitted, amends N.J.S.18A:66-15.1 et al., Ch.6.
- State Health Benefits Program:
 - Benefits paid for retirees, qualifications for eligibility; changed, amends C.52:14-17.28b et al., Ch.209.
- State Police Retirement System:
 - Accidental death benefits, surviving spouse, children pension; adjusted final compensation defined, C.53:5A-14.2, amends C.53:5A-14, Ch.350.
 - SHBP provided for mandatory retirees with 20 years, amends C.53:5A-8, Ch.316.
- TPAF, PERS, PFRS, veterans' status for participants in Somalia, Bosnia, Herzegovina, certain; provided, C.43:15A-24b et al., amends N.J.S.18A:66-2 et al., Ch.128.
- TPAF, PERS, pop-up survivor option, added to retirement allowance options, amends N.J.S.18A:66-47 et al., Ch.120.
- TPAF, PERS, reenrollment of certain retirees employed by DOE, boards of education; exemption provided, amends N.J.S.18A:66-53.2 et al., Ch.355.
- TPAF, PERS, retirement benefits for members, certain; increased, C.18A:66-41.1 et al., amends N.J.S.18A:66-41 et al., Ch.353.
- TPAF, PERS, retirement benefits; increased, other provisions; changed, C.18A:66-5.1 et al., amends N.J.S.18A:66-16 et al., Ch.133.
- TPAF, PERS, transfer of service credit between, time period for permissible dual membership; increased, amends N.J.S.18A:66-15.1 et al., Ch.341.
- Veterans' benefits extended to participants in Lebanon Crisis of 1958, certain, C.43:15A-24a, amends N.J.S.11A:5-1 et al., Ch.127.

PLANNING AND ZONING

Methadone clinics considered business use for zoning purposes, C.40:55D-66.10, Ch.19.

Zoning permits, issuance by municipality within 10 business days; required, amends C.40:55D-18, Ch.49.

POLICE

Juvenile records in central registry, 24 hour availability to law enforcement agencies, certain; required, C.2A:4A-60.1, amends C.2A:4A-60, Ch.191.

Law enforcement association members, certain, paid leave for conventions; required, amends N.J.S.11A:6-10 et al., Ch.309.

State Police, annual report on public complaints as to misconduct of officers, filing; required, C.53:1-10.1, Ch.218.

State Police, complaints against members, procedure, filing deadlines; provided, C.53:1-33, Ch.380.

Tampering with electronic device installed in patrol vehicle, fourth degree crime; offense created, amends N.J.S.2C:28-7, Ch.219.

PROFESSIONS AND OCCUPATIONS

"Athletic Training Licensure Act," amends C.45:9-37.35 et al., Ch.156.

Electronic warehouse receipts, use by public movers, warehousemen; permitted, amends C.45:14D-10, Ch.277.

Fire protection equipment, install, service, repair, inspect, maintain by contractors, certification; required, C.52:27D-25n et al., amends C.45:5A-18 et al., Ch.289.

Home inspectors license, issuance to professional engineers, architects, certain; permitted, amends C.45:8-71 et al., Ch.158.

Landscape architects, certified, inclusion in definition of "closely allied professional" in laws, certain; provided, amends C.45:3-1.1 et al., Ch.378.

Master plumber, qualification by prior experience, completion, certain; changed, amends C.45:14C-15, Ch.37.

Mortuary science, out-of-State practitioners, licensure requirements; clarified, amends C.45:7-49.1, Ch.83.

Nurse Multistate Licensure Compact, joined, C.45:11A-1 et seq., Ch.340.

Pawnbrokers, law; revised, amends R.S.45:22-10 et al., Ch.388.

Physicians, volunteer practice, reduced fee for licensure, certain circumstances; provided, amends C.45:9-19.15, Ch.410.

Professional licensing, board; law, various revisions, C.45:9-7.1, amends C.45:1-18 et al., Ch.307.

PROFESSIONS AND OCCUPATIONS (Continued)

- Professional planners, education requirement; broadened, amends C.45:14A-9, Ch.27.
- Public accountant, requirements for licensure; modified, amends C.45:2B-44 et al., Ch.149.
- Qualified journeymen electricians, registration requirements; established, C.45:5A-11.1 et seq., amends C.45:1-7 et al., Ch.21.
- Real estate brokers, broker-salespersons, salespersons, participation in promotions, certain; permitted, amends R.S.45:15-17, Ch.68.

PUBLIC CONTRACTS

- Contractors, remedy for delay caused by local government, school contracting units, limitations upon; prohibited, amends C.40A:11-19 et al., Ch.206.
- County College Contracts Law; revised, certain, amends C.18A:64A-25.3 et al., Ch.281.
- "Local Unit Electronic Technology Pilot Program and Study Act," Ch.30.
- Prejudgment interest on claims arising from State contracts, certain; permitted, amends N.J.S.59:13-8, Ch.202.

PUBLIC EMPLOYEES

- Commuter transportation benefits, State employee salary reduction program, permitted, Travel Demand management Program gross income tax exclusion; increased, C.52:14-15.1b, amends C.54A:6-23 et al., Ch.162.
- Health benefits plans, certain, full payment to in-network facilities using out-of-network practitioner as provider; required, C.26:2S-6.1 et al., amends C.26:2S-5, Ch.367.
- Layoff procedure; changed, amends N.J.S.11A:8-1 et seq., Ch.241.
- Military leave benefits, public officers, employees; clarified, C.52:13H-2.1, amends R.S.38:23-1 et al., repeals C.38:23-1.1 et seq., Ch.351.
- State employee compensation plan, negotiation procedure; changed, amends N.J.S.11A:3-7, Ch.240.
- State Health Benefits Program, 90 days' notice of termination of primary care physician in certain plans; required, C.52:14-17.29g, Ch.284.
- Vacation leave, accumulate, certain, during emergency, amends N.J.S.11A:6-2 et al., Ch.270.

PUBLIC RECORDS

- Criminal history records, information sharing, national compact; ratified, C.53:1-32, Ch.331.

PUBLIC RECORDS (Continued)

Public access to government records; expanded, regulated, C.47:1A-5 et seq., amends C.47:1A-1 et al., repeals C.47:1A-2 et al., Ch.404.

PUBLIC UTILITIES

Board of Public Utilities, membership; increased, amends R.S.48:2-1 et al., Ch.132.

Electricity, natural gas suppliers, verification of agreement to change, additional means; provided, amends C.48:3-51 et al., Ch.242.

Employee identification badge, SSN removed, amends C.48:3-43, Ch.256.

Telecommunications service providers, BPU enforcement of FCC rules; required, C.56:8-89.1, amends C.56:8-89, Ch.330.

Transitional energy facility assessment, unit rate surcharge on energy sales, certain, phase-out schedule; changed, amends C.54:30A-102 et al., Ch.433.

RACING

Casino simulcasting of horse races, laws, certain; revised, handicapping contests; authorized, C.5:5-63.2 et al., Ch.198.

"Off-Track and Account Wagering Act," C.5:5-127 et al., amends C.5:5-125 et al., Ch.199.

REAL PROPERTY

New home warranty security fund, law concerning; revised, C.46:3B-7.1 et seq., amends C.46:3B-2 et al., Ch.147.

RECREATION

Campgrounds, certain; exemption from requirement to have first aid, lifeguard personnel on duty, amends C.26:4A-4, Ch.151.

Carnival-amusement ride safety, law concerning; revised, C.5:3-42.1, amends C.5:3-32 et al., Ch.166.

Ticket brokers, requirements of resale of tickets, certain circumstances; established, C.56:8-35.1 et seq., amends C.56:8-26 et al., Ch.394.

REORGANIZATION PLANS

Transfer, reorganization of Office of Disability Services in the Department of Human Services to the Division of Disability Services in the Department of Human Services, No.001-2001.

SCHOOLS

Abbott district, tuition for sending district not to include certain aid in actual cost; calculation, amends N.J.S.18A:38-19, Ch.285.

SCHOOLS (Continued)

- AIDS Prevention Act, sex, AIDS education, abstinence; stress required, C.18A:35-4.19 et seq., Ch.303.
- Asthma medication, self-administration by school pupils; procedure revised, C.18A:40-12.7 et seq., amends C.18A:40-12.3, Ch.61.
- Jointure commissions, services, certain, to school districts; expanded, amends N.J.S.18A:46-25, Ch.150.
- New Jersey Commission on Programs for Gifted Students; established, Ch.335.
- New school facility, school district budget cap adjustment; provided, amends C.18A:7F-5, Ch.43.
- Operation Recognition, State-endorsed high school diplomas to veterans, certain; established, C.18A:7C-4.1, Ch.302.
- Pupil absence, excused; election board duty, C.18A:36-33, Ch.271.
- Pupil transportation:
- Contract extensions, exemption from advertisement, certain circumstances; provided, amends N.J.S.18A:39-3, Ch.111.
 - Courtesy busing on space available basis; costs, charge permitted, C.18A:39-1.8 et seq., Ch.327.
 - Laws concerning; revised, C.18A:39-3.1 et seq., amends C.18A:39-1.3 et al., Ch.65.
 - Nonpublic school transportation costs; increased, CPI adjusted, review of contract as to feasibility of combining public, nonpublic bus routes, C.18A:39-2.2, amends C.18A:39-1a, Ch.437.
 - To nonpublic schools in regional, consolidated districts, certain; permitted, amends C.18A:39-1.6, Ch.324.
- Recreation, conservation, land acquisition, joint, by municipalities, MUAs, school districts; permitted, C.40:14B-20.3 et al., Ch.283.
- Regional school boards, provision of certain budget information to voters; permitted, amends N.J.S.18A:13-17 et al., Ch.26.
- School-based probation program, annual report by Administrative Director of the Courts; required, access to pupil records; provided, C.2A:12-5.1 et seq., Ch.406.
- School board members, employees, indemnification; expanded, code of ethics for board members; established, C.18A:12-24.1, amends N.J.S.18A:12-20 et al., Ch.178.
- School buses, lease purchase for acquisitions, 10-year agreement; permitted, amends N.J.S.18A:20-4.2 et al., Ch.146.
- School Violence Awareness Week"; designated, C.18A:36-5.1, Ch.298.
- Smoking on school grounds, certain; prohibited, amends C.26:3D-17 et al., Ch.226.

SCHOOLS (Continued)

- Special education aid, additional, costs exceeding certain amounts; provided, amends C.18A:7F-19, Ch.356.
- Special education services for nonpublic school students, calculation of proportionate share; procedure changed, C.18A:46-19.10, Ch.230.
- Special elections, notice, holding on certain days; required, amends C.19:60-2, Ch.98.
- Spread the Word Program, books provided to K-5, established, C.18A:6-110, Ch.292.
- Student information, certain, disclosure on Internet, parental consent; required, C.18A:36-35, Ch.402.
- Surveys, certain, written parental consent before administration; required, C.18A:36-34, Ch.364.
- Violence, reports of in the public schools, requirements; increased, amends C.18A:17-46, Ch.299.
- World language instruction through nonpublic school organizations, credit toward public high school graduation, establishment of plan; required, C.18A:35-4.18, Ch.203.

SENIOR CITIZENS

- New Jersey Adult Family Care Act, caregivers; licensed, C.26:2Y-1 et seq., amends C.40:55D-66.1 et al., Ch.304.
- Ombudsman for the Institutionalized Elderly, disclosure to family members of results of certain investigations; required, C.52:27G-7.3, amends C.52:27G-7.2, Ch.7.
- "Senior Gold Prescription Discount Act," C.30:4D-43 et seq., Ch.96

STATE GOVERNMENT

- Advisory Council on Community Affairs, membership; revised, amends C.52:27D-11, Ch.269.
- Automated external defibrillators, placement in State buildings, certain, guidelines; required, C.2A:62A-28 et seq., Ch.375.
- Banks used as custodians of State assets, law revised, C.52:18A-8.1a et al., amends C.52:18A-8.1 et al., Ch.286.
- Criminal history records, information sharing, national compact; ratified, C.53:1-32, Ch.331.
- New Jersey Commission on Italian and Americans of Italian Heritage Cultural and Educational Programs; created, C.18A:4-42 et seq., Ch.343.
- New Jersey Commission on Native American Affairs, renamed New Jersey Commission on American Indian Affairs, laws; revised, amends C.52:16A-53 et al., Ch.417.

STATE GOVERNMENT (Continued)

New Jersey Domestic Security Preparedness Act, C.App.A:9-64 et seq., Ch.246; sunset provisions, time for legislative response; clarified, amends C.App.A:9-77, Ch.455.

New Jersey Terrorism Victims' Assistance Act of 2001, Ch.248.

New Jersey Tourism Advisory Council, representative of Statewide association; added, amends C.34:1A-51, Ch.255.

9-1-1 Commission, membership; four legislators, nonvoting, advisory, amends C.52:17C-2, Ch.290.

Office on Women's Health; established, C.26:1A-123 et seq., Ch.376.

Real property, Greystone Park Psychiatric Hospital, certain; sale, conveyance to Morris county, Ch.345

State Athletic Control Board, chairmanship; full-time position, amends C.5:2A-3, Ch.397.

State Commission of Investigation; permanent, amends C.52:9M-1, Ch.369.

State Library, transfer to Thomas Edison State College; effected, C.18A:73-42.1 et al., amends N.J.S.2A:12-6 et al., repeals C.18A:73-29 et al., Ch.137.

Terrorist attack of September 11, 2001, condemnation; actions by Department of Banking and Insurance, recommended, approved, J.R.8.

The Emergency Management Assistance Compact Act, C.38A:20-4 and 38A:20-5, Ch.249.

Uniform construction code, elevators in new multiple dwellings, required to accommodate ambulance cart, C.52:27D-123.14, Ch.263.

TAXATION

Commuter transportation benefits, State employee salary reduction program, permitted, Travel Demand management Program gross income tax exclusion; increased, C.52:14-15.1b, amends C.54A:6-23 et al., Ch.162.

Corporation business tax:

Equipment used in treatment of effluent; credit provided, C.54:10A-5.31 et seq., Ch.321.

Manufacturing equipment, employment investment tax credit for electric, thermal energy production, amends C.54:10A-5.17, Ch.399.

Payment obligation of partnerships, limited liability companies, certain; laws revised, C.54:10A-15.6 et seq., amends C.54:10A-4 et seq., Ch.136.

Electronic tax lien sales by municipalities, establishment of procedures; required, C.54:5-19.1, Ch.160.

Farmland assessment "roll-back," acquisitions by Palisades Interstate Park Commission; exempt, amends C.13:8C-29 et al., Ch.312.

TAXATION (Continued)

- Firefighters' organization, property, certain, year-round exemption from taxation; provided, amends R.S.54:4-3.10, Ch.354.
- Firefighters' organizations, certain, income-producing activities, certain, tax-exempt status; maintained, amends R.S.54:4-3.10, Ch.85.
- Gross income tax returns:
- Option for contributions for AIDS services; provided, C.54A:9-25.19, Ch.217.
 - Option for contributions for Literary Volunteers of America - New Jersey; provided, C.54A:9-25.20, Ch.273.
 - Option for contributions for New Jersey Prostate Cancer Research Fund, C.54A:9-25.21 et al., Ch.305.
- Hazardous substances, certain, taxes, cap on tax due under Spill Compensation and Control Act; changed, amends C.58:10-23.11h, Ch.424.
- Homestead property tax reimbursement program, income eligibility; increased, amends C.54:4-8.67, Ch.251.
- Homestead rebate benefit, maximum; increased, indexed, amends C.54:4-8.59 et seq., Ch.159.
- Limousines, sales and repair, certain, sales and use tax; exemption, C.54:32B-8.52, Ch.90.
- Military pensions, survivor's benefits, certain, gross income tax; exclusion, amends C.54A:6-26, Ch.84.
- Municipal property tax lien, management services contract; permitted, C.54:5-19.2 et seq., Ch.266.
- "Neighborhood Revitalization State Tax Credit Act," C.52:27D-490 et seq., Ch.415.
- NJ SAVER rebate, phase-in; accelerated, amends C.54:4-8.58b, Ch.106.
- Property tax exemption for religious, charitable organization, lease to certain other entities without loss of exemption; permitted, amends R.S.54:4-3.6, Ch.18.
- Reassessment, revaluation of taxing district, certain circumstances; required, amends R.S.54:4-23, Ch.101.
- Registration of businesses providing goods and services to State, casinos, with Division of Revenue; required, C.52:32-22 et al., amends C.5:12-92, Ch.134.
- Sales tax, equipment for treatment, conveyance of effluent, certain; exempt, amends C.54:32B-8.26, Ch.322.
- Sales tax, refund program for flood victims of Hurricane Floyd, six-month extension; provided, amends P.L.1999, c.365, Ch.411.
- S corporations, corporation business tax on regular income; eliminated, amends C.54:10A-5, Ch.23.

TAXATION (Continued)

Steel outdoor advertising signs, supporting structures, not considered real property for purpose of local property taxation, amends R.S.54:4-1, Ch.438.

Tax title holder's claim for party search expense, 20-year title search requirement; removed, amends R.S.54:5-61 et seq., Ch.72.

Tobacco Master Settlement Agreement, inspection of tax records, certain, to facilitate administration; provided, amends R.S.54:50-9, Ch.358.

Tobacco products wholesale sales and use tax, rate; adjusted, amends C.54:40B-2 et al., Ch.448.

Transitional energy facility assessment, unit rate surcharge on energy sales, certain, phase-out schedule; changed, amends C.54:30A-102 et al., Ch.433.

"Uniform Sales and Use Tax Administration Act," C.54:32B-44 et seq., Ch.431.

TOBACCO

Tax stamp on cigarette packages, law; revised, amends C.54:40A-15, Ch.396.

Tobacco Master Settlement Agreement, inspection of tax records, certain, to facilitate administration; provided, amends R.S.54:50-9, Ch.358.

Tobacco products wholesale sales and use tax, rate; adjusted, amends C.54:40B-2 et al., Ch.448.

TRANSPORTATION

"New Jersey Marine Transportation System Act," C.27:1A-75 et seq., amends C.12:6B-3 et seq., Ch.429.

"New Jersey Transportation Heritage Center," location, site; provided, C.28:2-32 et al., Ch.113.

Railroads, offenses involving damage of property, interference with transportation; grades of offenses, amends C.2A:53A-16 et al., repeals R.S.48:12-167, Ch.413.

Transportation Trust Fund Authority, debt limit, refunding bonds; excluded, amends C.27:1B-9, Ch.258.

UNEMPLOYMENT COMPENSATION

Unemployment, temporary disability benefits, requirements for eligibility; changed, amends R.S.43:21-4 et al., Ch.17.

UNIFORM COMMERCIAL CODE

Electronic warehouse receipts, use by public movers, warehousemen; permitted, amends C.45:14D-10, Ch.277.

UNIFORM COMMERCIAL CODE (Continued)

Secured transactions, laws concerning; revised, Chapter 9 of Uniform Commercial Code; replaced, N.J.S.12A:9-101 et al., amends N.J.S.12A:1-105 et al., repeals C.2A:37A-1 et al., Ch.117; various amendments, revisions, N.J.S.12A:9-707 et al., amends N.J.S.12A:9-102 et al., Ch.386.

WATER SUPPLY

Dam repair, lake dredging, stream cleaning, funding; provided, C.58:4-11 et seq., Ch.360.

North Jersey District Water Supply Commission, two commissioners; added, amends R.S.58:5-3, Ch.374.

Oakland Flood Protection Project, participation by North Jersey district water supply commission; authorized, C.58:5-36.1 et seq., Ch.163.

"Private Well Testing Act," C.58:12A-26 et seq., Ch.40.

Water diversion permits, temporary, certain; authorized, amends C.58:1A-7, Ch.319.

WEAPONS

Handgun purchase permit, firearms purchaser identification card, obtaining, person adjudicated delinquent as juvenile; disqualified, amends N.J.S.2C:58-3 et al., Ch.3.

WEIGHTS AND MEASURES

Vehicles used in transportation of construction materials, procedure for weighing; revised, C.51:1-77.1, amends R.S.51:1-2, Ch.95.

WORKERS' COMPENSATION

Accident, injury reports, filing, confidentiality requirements; changed, C.34:15-128.1 et seq., amends R.S.34:15-96 et al., repeals R.S.34:15-97, Ch.326.

Benefits, certain, for police, fire, emergency workers for service in regard to terrorist acts of September 11, 2001; provided, amends R.S.34:15-43 et al., Ch.325.

Compensation petitions, workers, certain, electronic filing, response; permitted, amends R.S.34:15-51 et seq., Ch.94.

Emergency volunteers, certain, exemption from 7-day waiting period for benefits; provided, amends R.S.34:15-14 et al., Ch.328.

Judges, retirement system in PERS, C.43:15A-142 et seq., Ch.259.

TDI payments, recovery from workers' compensation payments; required demonstration, amends C.43:21-30, Ch.329.

Temporary disability benefits for employment based in another state, reciprocal agreements; authorized, C.43:21-45.1, Ch.451.

Unemployment, temporary disability benefits, requirements for eligibility; changed, amends R.S.43:21-4 et al., Ch.17.