ACTS

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Second Annual Session

OF THE

Two Hundred and Sixth Legislature

OF THE

STATE OF NEW JERSEY

AND

Thirty-Sixth Under the New Constitution

1995

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CHAPTER 205

Note: In approving the following act, certain items were deleted or reduced by the Governor. For a statement of those items, see the Governor's statement appended to Assembly Bill No. 12 (Second Reprint) (Corrected Copy), dated August 14, 1995.

AN ACT authorizing the establishment of a pilot program in the Department of Commerce and Economic Development for regional field offices to assist in business retention and expansion.

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 Public-Private Regional Field Offices Act."

2. The Legislature finds and declares that:

a. The General Assembly Task Force on Business Retention, Expansion and Export Opportunities conducted extensive hearings concerning the importance of implementing new business retention, attraction and expansion strategies in order to sustain the economic recovery in New Jersey;

b. Based upon these hearings, the Task Force has recommended the creation of a network of regional field offices as a "sales and service arm" of the Department of Commerce and Economic Development in order to establish closer local ties with the business community, to create more personalized and customized service and to gain a better understanding of the specific needs of business in the various regions of the State;

c. The regional field offices will not only enable the department to collect more accurate data relevant to business planning decisions in various regions of the State but will also enable the department to forge closer ties to the local business community through more individual contact and greater presence at the local levels;

d. While the Department of Commerce and Economic Development should be commended for establishing lines of communication with local economic development offices and encouraging greater local and private participation in economic development programs, the regional field offices are intended to enhance the efforts of the department and make New Jersey more competitive with what other states are doing in this area; and

e. Other states such as New York, which has ten regional field offices, and Michigan which initiated The Michigan Jobs Commission and Michigan First Inc., have successfully implemented

locally-driven marketing strategies in partnership with local communities, existing businesses and nonprofit groups to retain and improve job opportunities and improve the overall business climates, and have demonstrated that regional field offices can reduce the turnaround time for resolving business problems, create greater leveraging of State resources and produce more comprehensive "incentive packages" to retain existing businesses and to attract new businesses.

The Legislature therefore determines that it is in the public interest to establish a pilot program under which the State will oversee and coordinate the development of a network of regional field offices in order to initiate an aggressive outreach program to the business community to help retain and attract businesses.

3. As used in this act:

"Atlantic coastal region" means an area comprising the counties of Atlantic, Cape May, Monmouth and Ocean;

"Central region" means an area comprising the counties of Mercer, Middlesex and Somerset;

"Commissioner" means the Commissioner of Commerce and Economic Development;

"Department" means the Department of Commerce and Economic Development;

"Economic master plan commission" means the New Jersey Economic Master Plan Commission established by Executive Order No. 1 issued by the Governor on January 18, 1994;

"Eastern region" means an area comprising the counties of Hudson and Union;

"Industry sector network" means clusters of two or more businesses that are (1) within an industry that makes or could make an important contribution to the economy of the State, which may include, but need not be limited to, health care, pharmaceuticals, chemicals, communications, telecommunications, electronics, software, insurance, tourism, transportation, construction, agriculture, and biotechnology, and (2) working jointly to manufacture, sell or market products, develop technologies or create or disseminate information;

"Northcentral region" means an area comprising the counties of Essex and Passaic;

"Northeastern region" means an area comprising the county of Bergen;

"Northwestern region" means an area comprising the counties of Morris, Hunterdon, Sussex and Warren;

"Program" means the "New Jersey Public-Private Regional Field Office Pilot Program" established pursuant to section 4 of this act;

"Regional field offices" mean field offices located within the Atlantic coastal, central, eastern, northcentral, northeastern, northwestern or southern regions, and authorized by the commissioner to participate in the pilot program as provided in section 4 of this act; and

"Southern region" means an area comprising the counties of Burlington, Camden, Cumberland, Gloucester and Salem.

4. a. The commissioner is authorized to establish the New Jersey Public-Private Regional Field Office Pilot Program, hereinafter "the program." The purpose of the program shall be to establish a network of regional field offices which will coordinate the delivery of business assistance services from the department to local businesses, and to work in partnership with local communities and existing businesses to promote business retention, attraction and expansion.

b. The commissioner may designate sites for three regional field offices as part of the program authorized pursuant to this section, at least one of which shall be located in the southern region of the State.

c. The regional field offices shall assist the department in developing and implementing an aggressive business retention, attraction and expansion program. In particular, the regional field offices shall be responsible for conducting surveys of local businesses by telephone, direct mail contact, and on-site visits in order to determine the types of assistance and services needed to build a partnership with local businesses, to promote long-term job creation and to expand economic opportunities.

d. The regional field offices shall seek to provide more personalized and customized assistance, quicker turnaround time, and improved service delivery to local businesses and shall act as regional clearinghouses of information to monitor business and community developments at the local level that may impact more generally on business decisions to leave the State or to relocate to the State.

e. Each regional field office staff may include local business community volunteers as well as State and local economic development professionals, from both the public and private sectors, who shall be organized into interdisciplinary outreach teams. The outreach teams shall act as the local "sales and service arm" of the department to promote business retention, attraction and expansion in the area served by the office.

f. The regional field offices shall work in conjunction with the department to formulate the components of customized incentive packages to address the specific requirements of businesses located in or seeking to relocate to the area served by the offices. The com-

ponents of the incentive packages may include, but shall not be limited to, assistance with workforce development, site location, regulatory assistance, export and international assistance, technology development and business and technical assistance.

g. The regional field offices shall also be responsible for promoting the development of regional and Statewide industry sector networks and associations to provide a means for businesses to work together toward solutions to common problems and to share information affecting specific industry groups to help improve their competitiveness with businesses in other states. The offices shall also seek to provide assistance to local businesses, whenever possible, to expedite the resolution of regulatory problems with the appropriate departments or offices of State, county and local government.

5. The commissioner shall, not later than the 90th day after the effective date of this act, begin to enter into arrangements with, and seek voluntary "in-kind" and monetary contributions from, public and private entities in the State including, but not limited to, existing business and commerce groups, private sector firms, county economic development offices, public utilities and appropriate agencies, departments, divisions, commissions, boards or bureaus of the State, for the purposes of: (1) identifying opportunities and entering into agreements that minimize the cost of the program through shared office space arrangements, telephone and office equipment; (2) developing a Statewide computerized tracking system to maintain records of business contacts with the regional field offices, including detailed follow-up of the progress and outcomes of the contacts; and (3) staffing regional field offices with local business outreach volunteers and economic development personnel from local firms and existing business and commerce groups to establish communication with local business offices and to compile information relating to current problems or issues affecting businesses in the region.

6. The commissioner is authorized to delegate responsibilities for the program, other than the designation of the sites for the regional field offices, to a private sector nonprofit corporation organized to implement the recommendations of the economic master plan commission in order to assist the department with effectuating the goals of this act.

7. Within 24 months of the implementation thereof, the commissioner shall report to the Governor and the Legislature on the outcome of any pilot program implemented pursuant to the authority provided in this act. The report shall include, but not be limited to, an assessment of whether the regional field offices are self-supporting entities, and if not, what specific steps should be

taken to enable the offices to operate without the need for State assistance, the cost of the program, the number and type of businesses assisted by the program, and any recommendations regarding the improvement and expansion of regional field offices in the State including, but not limited to, proposals for reconfiguring the regions of the State in which the permanent network of regional field offices should be located.

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

9. The department shall make every effort, to the extent feasible, to seek funds from private sector businesses, associations, and foundations including nonprofit corporations organized to implement the recommendations of the economic master plan commission, and to obtain funds from federal, State and local economic development agencies including the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4), as the need for funds arises.

10. This act shall take effect immediately and shall expire on the 90th day after the submission of the commissioner's report and recommendations to the Governor and Legislature pursuant to section 7 of this act.

Approved August 14, 1995.

CHAPTER 206

AN ACT promoting micro-business development and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).

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

C.34:1B-70 Short title.

1. This act shall be known and may be cited as the "Micro-Business Development and Assistance Act."

C.34:1B-71 Findings, declarations relative to microlending.

2. The Legislature finds and declares that:

a. Approximately 98% of New Jersey's employers are small business operators and more than 1.5 million employees are working in small businesses in this State;

b. Testimony taken at legislative hearings revealed that between 1987 and 1992, corporate down-sizing created a sizeable group of displaced and dislocated private sector workers, 12 to 14% of whom have undertaken self-employment opportunities, with the balance remaining underemployed or unemployed;

c. While the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises has a peer group micro-lending program in place which targets certain geographical regions of the State, it is imperative that we find new and innovative ways to help unemployed and underemployed individuals throughout the entire State to re-enter the marketplace; and

d. Experience in numerous other states and in certain urban areas in New Jersey has shown that "microlending," or carefully underwriting small loans to individual entrepreneurs with well-developed, realistic business plans, has been successful in helping individuals, without regard to geographical location, to start, maintain and expand small businesses.

C.34:1B-72 Definitions.

3. As used in this act:

"Certified micro-business development corporation" means a micro-business development corporation certified pursuant to section 7 of this act;

"Commissioner" means the Commissioner of Commerce and Economic Development;

"Department" means the Department of Commerce and Economic Development;

"Development loan" means money loaned to a certified micro-business development corporation by the authority for the purpose of making a micro-business loan pursuant to section 6 of this act;

"Micro-business development corporation" means a nonprofit corporation established prior to or after the effective date of this act, and pursuant to Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes, or other law of this State to provide training, technical assistance, and access to capital for the startup or expansion of qualified micro-businesses;

"Micro-business loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the micro-business assistance program;

"Program" means the micro-business assistance program established pursuant to section 4 of this act; and

"Qualified micro-business" means a business enterprise, which has its principal place of business in this State, is independently owned and operated as a sole proprietorship, partnership or corporation, with 20 or fewer employees in full-time positions and with a level of gross income from operations defined by the authority as a micro-business.

C.34:1B-73 New Jersey Micro-Business Assistance Program.

4. a. There is created, in the New Jersey Economic Development Authority, a "New Jersey Micro-Business Assistance Program," hereinafter, "the program." The program shall be established by the authority in collaboration with the department. The program shall consist of loans, loan guarantees, or both, and training and technical assistance which shall be provided to qualified micro-businesses through a network of regional micro-business development corporations.

b. To implement the program, the authority shall, to the greatest extent feasible, cooperate with micro-business development corporations in no less than three service regions of the State consisting of one or more counties in seeking to involve the resources of local banks and financial institutions in order to leverage dollars available for the program. The service regions shall be determined by the authority on the basis of: comparative unemployment or underemployment; an economic environment conducive to the establishment or expansion of businesses built around qualified micro-businesses; the need for assistance in maintaining, rehabilitating or refurbishing micro-businesses where such activity will protect or enhance a small-business economy; and the level of anticipated financial and other participation of county economic development agencies, municipal economic development agencies or business organizations, and county or municipal educational and nonprofit organizations.

c. In designing and implementing the program, the authority is authorized to enter into agreements with county and municipal agencies, and local business, educational and nonprofit organizations, in order to leverage its development loans with funds from such entities. Such agreements may also require participation from the county and municipal level where training and technical assistance, and other self-employment services are concerned.

The terms and conditions of all loans and loan guarantees provided by the authority shall be determined by the authority.

C.34:1B-74 "New Jersey Micro-Business Assistance Fund."

5. a. To implement the program, the authority shall establish and maintain a special revolving fund to be known as the "New Jersey Micro-Business Assistance Fund," hereinafter, "the assistance fund," which shall be credited with:

(1) such moneys from the economic growth account of the "Economic Recovery Fund" established pursuant to section 4 of P.L.1992, c.16 (C.34:1B-7.13), which the authority determines are necessary to effectively implement the program, within the limits of funding available from the Economic Recovery Fund, based upon the response to the program by micro-business development corporations; (2) any moneys that shall be received by the authority from the repayment of the moneys in the assistance fund used to provide micro-business development loans pursuant to this act and interest thereon; (3) moneys as may be available to the authority from business assistance programs administered by the authority or by other State agencies or authorities including, but not limited to, the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to P.L.1985, c.386 (C.34:1B-47 et seq.), the New Jersey Urban Development Corporation established pursuant to P.L.1985, c.227 (C.55:19-1 et seq.), the department or administered by federal agencies or by private sector foundations; (4) appropriations made by the Legislature to effectuate the purposes of this act; (5) fees collected from applicants pursuant to subsection c. of this section; and (6) other moneys made available including, but not limited to, funds provided by agreement with private investors, small business investment corporations, banks and other lending institutions to effectuate the purposes of this act.

b. Moneys in the assistance fund which are determined by the authority not to be needed for current responsibilities of the assistance fund, may be invested by the authority in any direct obligations as to which the principal and interest thereof are guaranteed by the United States of America or any other obligation deemed appropriate by the authority. The authority may appoint a director to manage the activities associated with the assistance fund. The director shall receive compensation as determined by the authority.

c. The authority may charge fees in connection with applications for financial assistance from the assistance fund as it deems reasonable.

C.34:1B-75 Development loans to micro-business development corporations.

6. a. The authority shall use the moneys in the assistance fund established pursuant to section 5 of this act to make development loans to micro-business development corporations certified by the authority to participate in the program. Moneys received from micro-business development corporations in repayment of a development loan shall be deposited in the assistance fund. The authority may make development loans from the assistance fund in amounts not to exceed $250,000 per loan to a certified micro-business development corporation.

b. In determining the criteria for making development loans, the authority shall, in addition to applying its customary underwriting criteria, also consider:

(1) the plan for providing services to qualified micro-businesses;

(2) the scope of services to be provided by the certified micro-business development corporation;

(3) the geographic representation of all regions of the State, including both urban and rural municipalities;

(4) the plan for providing service to minorities, women and low-income persons;

(5) the ability of the corporation to provide business training and technical assistance to qualified micro-business clients;

(6) the ability of the corporation, with its plan, to monitor and provide financial oversight of recipients of micro-business loans, to administer a revolving loan fund, and to investigate and qualify financing proposals and to service credit accounts;

(7) sources and sufficiency of operating funds for the certified micro-business development corporations; and

(8) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to the service region within which it is located.

c. Development loan funds may be used by a certified micro-business development corporation to:

(1) satisfy matching requirements for other State, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified micro-business development corporation's ability to provide and administer loans, technical assistance, or management-training to qualified micro-businesses;

(2) establish a revolving loan fund from which the certified micro-business development corporation may make loans to qualified micro-businesses, provided that a single loan does not exceed $50,000 and the outstanding balance of all loans to a qual-

ified micro-business or a project participated in by more than one qualified micro-business or to two or more qualified micro-businesses in which any one person holds more than a 20% equity share does not exceed $50,000; and

(3) establish a guarantee fund from which the certified micro-business development corporation may guarantee loans made by financial institutions to qualified micro-businesses. However, a single guarantee may not exceed $50,000, and the aggregate of all guarantees to a qualified micro-business or a project participated in by more than one qualified micro-business or to two or more qualified micro-businesses in which any one person holds more than a 20% equity share may not exceed $50,000.

d. Development loan funds may not be:

(1) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(2) used to refinance a nonperforming loan held by a financial institution or to pay the operating costs of a certified micro-business development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

e. Certified micro-business development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be in a ratio of at least $1 from other sources for each $3 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

f. Development loans shall be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the authority that are consistent with the purposes of this act and with rules and regulations promulgated by the authority to implement this act.

g. (1) Unless subject to federal law, rule or regulation, each certified micro-business development corporation that receives a development loan under this act shall undergo an audit, at its own expense, at least once every two years. The authority shall designate an auditor to conduct the audit.

(2) If an audit is performed under a requirement of federal law, rule or regulation, the department shall waive the audit required in this subsection with respect to all issues addressed by the fed-

eral audit report. However, the authority may require an audit of matters that are not, in the authority's judgment, addressed by the federal report including, but not limited to, verification of compliance with requirements specific to the program, such as job-generation standards and reporting.

h. A certified micro-business development corporation that is in default for nonperformance under rules and regulations established by the authority may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on the receivables of the corporation receiving the loan.

C.34:1B-76 Certification of micro-business development corporation.

7. The authority may certify a micro-business development corporation when it determines that the corporation:

a. has developed a viable plan for providing training, access to financing, and technical assistance for qualified micro-businesses;

b. has broad-based community support in a designated service region of the State, as reflected, for example, by the membership of its board of directors, and has demonstrated support from other regional entities to provide assistance with service delivery and financial aspects; and

c. has an adequate source of operating capital.

C.34:1B-77 Additional powers of authority.

8. a. The authority shall have, in addition to the powers enumerated in section 5 of P.L.1974, c.80 (C.34:1B-5), the power to enter into written agreements, including limited partnership agreements, with one or more professional investors or small business investment corporations or with one or more State agencies or authorities for the purposes of establishing a pool of moneys to be deposited in the assistance fund and to provide moneys, to be used exclusively for development loans to micro-business development corporations. The pooled moneys provided by the authority from the assistance fund shall be fixed at an interest rate to be determined by the authority and shall be for a term not exceeding one year.

b. The authority may also accept grants, donations, and other private and public income, including payments of interest on loans made by the authority.

c. The authority shall deposit all moneys received under this section in the assistance fund established pursuant to section 5 of this act.

C.34:1B-78 Additional duties of authority.

9. In addition to the duties of the authority required under section 7 of P.L.1974, c.80 (C.34:1B-7), the authority shall, in conjunction with certified development corporations and the department, prepare a report within two years following the effective date of this act, and not later than September 15 of each third year thereafter. The report shall include, but not be limited to, a description of the demand for the program from qualified micro-businesses, types of businesses the fund has assisted, the efforts made by the authority and the development corporations to promote the program and to establish a pool of funds from private and public sources, the total amount of loans or lines of credit issued by the authority or the development corporations, as appropriate, from the assistance fund or the revolving lines of credit, as the case may be, and an assessment of the effectiveness of the program in meeting the goals of this act. The authority shall submit its reports to the Governor and the Legislature, along with any recommendations for legislation to improve the effectiveness of the program.

C.34:1B-79 Rules, regulations.

10. The authority and the department shall jointly adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to effectuate the purposes of this act including, but not limited to, the criteria and procedures concerning certification of micro-business development corporations, the criteria and procedures for selecting from competing development loan applications and for awarding development loans to certified micro-business development corporations, criteria and procedures to be followed by certified micro-business development corporations in administering revolving loan funds supported by the program, criteria for determining the terms and conditions of development loans and loan repayments, and criteria for determining nonperformance and declaring default in the administration of development loans.

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

Approved August 14, 1995.

CHAPTER 207

AN ACT authorizing the Commissioner of Commerce and Economic Development to develop new strategies to attract and retain businesses and supplementing chapter 1B of Title 34 of the Revised Statutes.

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

C.34:1B-80 Short title.

1. This act shall be known and may be cited as the "New Jersey Industry Sector Network Development Act."

C.34:1B-81 Findings, declarations relative to strategies promoting businesses.

2. The Legislature finds and declares that:

a. The Department of Commerce and Economic Development admirably provides generic services and technical assistance to businesses that request such help;

b. The department should now complement its existing, generic types of assistance with appropriate, specific strategies oriented towards promoting businesses in high potential and mid-potential growth industry sectors, and businesses in declining industry sectors that have the potential for revitalization; and

c. These new, specific strategies may include assistance in the creation of industry sector networks wherein similar businesses work together and learn from each other thereby enabling such networks to benefit from economies of scale and thus enhance their competitiveness in current markets and also permit their entry into new, larger markets.

C.34:1B-82 Definitions.

3. As used in this act:

"Commissioner" means the Commissioner of Commerce and Economic Development;

"Department" means the Department of Commerce and Economic Development;

"Economic master plan commission" means the New Jersey Economic Master Plan Commission established by Executive Order No. 1 issued by the Governor on January 18, 1994;

"Industry sector network" means clusters of two or more businesses within a key industry working jointly to manufacture, sell or market products, develop technologies or create or disseminate information; and

"Key industry" means an industry that makes or could make an important contribution to the economy of the State, which may include, but need not be limited to, healthcare, pharmaceuticals, chemicals, communications, telecommunications, electronics, software, insurance, tourism, transportation, construction, agriculture, and biotechnology.

C.34:1B-83 Assistance to key industries.

4. The commissioner may undertake to act through the Division of Economic Development, or through a nonprofit entity which may include a nonprofit corporation organized to implement the recommendations of the economic master plan commission, to assist key industries with:

a. The creation of industry sector networks and the development of a program designed to train persons who would assist in the formation of such networks;

b. The development of industry related markets;

c. The establishment of industry related training and education programs;

d. The improvement of industry products or quality of services;

e. The development of solutions to industry problems that hinder the marketing of products or services;

f. The adoption of policies to assure that industry proprietary information remains confidential; and

g. Such other industry problems or opportunities that may arise or be so identified.

C.34:1B-84 Coordination, cooperation with programs, organizations.

5. In implementing the goals of section 4 of this act, the commissioner shall encourage the division or a designated nonprofit entity, as the case may be, to coordinate efforts with existing economic development programs and to cooperate with other public and private organizations, which may include, but need not be limited to, State and local agencies and commissions involved with business network development, utility companies, industry trade and business groups or associations, or private sector nonprofit groups organized to promote economic development in the State.

C.34:1B-85 Private industry membership fees for sector networks.

6. To the extent that the commissioner acts pursuant to section 4 of this act, the commissioner shall encourage industry sector networks to support their network activities with private industry membership fees to enable the networks to be self-supporting,

and shall encourage members of particular industry sector networks to adopt, by mutual agreement of the members, a schedule of fees to be paid by members of the particular network.

C.34:1B-86 Allocation of matching funds.

7. The commissioner may allocate matching funds to help an industry sector network with network start-up costs and activities in order to stimulate private sector financing to promote self-sufficient networks.

C.34:1B-87 Rules, regulations.

8. The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt any rule and regulation necessary to effectuate the purposes of this act.

9. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 208

AN ACT concerning relocation missions and supplementing Title 52 of the Revised Statutes.

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

C.34:1B-88 Short title.

1. This act shall be known and may be cited as the "New Jersey Business Relocation Mission Private Partnership Act."

C.34:1B-89 Findings, declarations relative to business relocations.

2. The Legislature finds and declares that:

a. A 1993 survey of business relocations reveals that business relocations to New Jersey came from 12 other states and nine foreign locations;

b. Intra-regional moves accounted for over three-fourths of the business relocations with 56 businesses moving to this State from New York, and eight from New England and Pennsylvania;

c. Businesses which relocated to New Jersey represent a wide variety of industries including manufacturing, transportation, financial services and other service industries;

d. Testimony taken during hearings held by the General Assembly Task Force on Business Retention, Expansion and Export Opportunities revealed that other states have been much more aggressive than New Jersey in promoting business relocations through telemarketing, direct mail and "on site" visits to promote business relocations from other states and foreign locations; and

e. It is, therefore, in the public interest for New Jersey to participate in the organization of State Relocation Missions and Foreign Relocation Missions in order to compete more effectively with what other states are doing to promote business relocations from other states and foreign locations.

C.34:1B-90 Establishment of State Relocation Missions, terms defined.

3. The Department of Commerce and Economic Development, hereinafter "the department," acting through the Division of Economic Development, or through a nonprofit entity designated by the department which may include a nonprofit corporation organized to implement the recommendations of the economic master plan commission, is authorized to work with private sector businesses to develop public-private partnerships to establish State Relocation Missions in regions of the United States which are competitive with New Jersey. As used in this section, "economic master plan commission" means the New Jersey Economic Master Plan Commission established pursuant to Executive Order No. 1 issued by the Governor on January 18, 1994. The purpose of these missions, which shall utilize the resources of interested public utilities, county economic development departments, industry sector networks, New Jersey firms and private sector nonprofit groups involved in promoting economic development in the State, shall be to recruit companies to New Jersey which have expressed an interest in relocating to other states. As used in this section, "industry sector network" means clusters of two or more businesses that are (1) within an industry that makes or could make an important contribution to the economy of the State, which may include, but need not be limited to, healthcare, pharmaceuticals, chemicals, communications, telecommunications, electronics, software, insurance, tourism, transportation, construction, agriculture, and biotechnology, and (2) working jointly to manufacture, sell or market products, develop technologies or create or disseminate information.

C.34:1B-91 Establishment of Foreign Relocation Missions.

4. The department, acting through the Division of International Trade, or through a nonprofit entity designated by the department which may include a nonprofit corporation organized

to implement the recommendations of the economic master plan commission, is authorized to work with private sector businesses to develop public-private partnerships to establish Foreign Relocation Missions in addition to the existing foreign offices established by the department. As used in this section, economic master plan commission means the New Jersey Economic Master Plan Commission established pursuant to Executive Order No. 1 issued by the Governor on January 18, 1994. The department may consult with the Port Authority of New York and New Jersey and the Delaware River Port Authority, as well as other public and private organizations, including private sector nonprofit groups involved in promoting economic development in the State to jointly develop relocation missions to recruit foreign companies to New Jersey which have expressed an interest in relocating from their present countries. The department shall strive, to the extent feasible, to utilize the resources of private sector businesses involved in the public-private partnerships developed pursuant to this section and to arrange for the sharing of office space, personnel and equipment with other public and private organizations which may have established offices in foreign locations in order to reduce the costs of establishing the Foreign Relocation Missions.

C.34:1B-92 Report to Governor, Legislature.

5. The department shall, within 18 months following the effective date of this act, submit a report to the Governor and the Legislature describing the efforts made by the department, or a designated nonprofit entity, to promote public-private partnerships to develop State and foreign relocation missions, the total number of such missions established and any recommendations for legislation to better effectuate the goals of this act.

6. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 209

AN ACT concerning export financing and supplementing Title 34 of the Revised Statutes.

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

C.34:1B-93 Short title.

1. This act shall be known and may be cited as the "Export Financing Opportunities Act."

C.34:1B-94 Findings, declarations relative to export financing.

2. The Legislature finds and declares that:

a. Currently, despite the existence of banks with active international export departments, small and medium-sized businesses in New Jersey find it difficult to obtain pre-export financing and other export finance services needed to defray the costs of potentially profitable orders.

b. Although there is currently a State-sponsored export working capital program for small and medium-sized businesses and an export loan guarantee program offered in conjunction with participating banks, relatively few transactions have been approved under these programs.

c. The public interest calls for encouraging the growth of exports and small and medium-sized businesses as well as providing stimulation to the economy and to employment by the creation of an export financing company supported by both public and private funds.

d. The public funding of an export financing company shall be accomplished by the purchase of stock in the company by the New Jersey Economic Development Authority and other public entities involved in international export markets, such purchases to be specifically limited as to the percentage of participation.

e. The capitalization of the export financing company would be so structured that the New Jersey Economic Development Authority and other public entities would incur minimal risk on their investment, with private investors assuming most of the risk and earning more of the profits should the new venture prove successful.

C.34:1B-95 Definitions.

3. As used in this act:

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

"Commissioner" means the Commissioner of Commerce and Economic Development.

"Department" means the Department of Commerce and Economic Development.

"Export financing company" means a private corporation incorporated for the purpose of financing the export activities of small or medium-sized businesses.

"Small or medium-sized business" means a business enterprise, which has its principal place of business in this State, is independently owned and operated as a sole proprietorship, partnership or corporation, with a level of gross income from operations defined by the authority as a small or medium-sized business.

C.34:1B-96 Investment of moneys in export financing company.

4. The authority is authorized, notwithstanding any law to the contrary, to invest such moneys from the "Economic Recovery Fund," established pursuant to section 3 of P.L.1992, c.16 (C.34:1B-7.12), or from other export or business assistance programs administered by the authority, as may be available and which the authority deems appropriate for the purposes of this act, in an export financing company, hereinafter "the company," to be incorporated pursuant to the provisions of this act, which, together with those investments which may be made in the stock of the company by other public entities involved in international export markets that may include, but not necessarily be limited to, the Delaware River Port Authority and the Port Authority of New York and New Jersey, shall be at a minimum amount to be determined by the Export Finance Company Advisory Council established pursuant to section 7 of this act. The moneys shall be used for the purchase of stock in the company, provided that the class of stock purchased by the authority and other public entities shall be of such type and character as to require the company to repay the investment of funds from the authority and other public entities prior to the repayment of funds from private sources, but in no event shall the amount of such stock purchased by the authority and other public entities exceed 49% of the total outstanding stock of the company. The authority is authorized in its discretion to sell or otherwise dispose of the stock purchased by the authority as shall be in the interest of the authority but the authority shall sell or otherwise dispose of the stock no later than three years after the date of purchase.

C.34:1B-97 Qualification as export financing company.

5. In order to qualify as an export financing company eligible to be the subject of an investment by the authority and by the other public entities involved in international export markets, a company shall:

a. Have a board of directors or board of trustees appropriate to the form of incorporation of the company consisting of: (1) the

commissioner and the chairman of the authority, who shall be members ex officio; and (2) representatives of export trading companies, banking and other financial institutions, and other representatives of the private sector, who shall be selected by private stockholders, and who shall constitute the majority of the membership of the board.

b. Retain the services of an independent commercial auditor:

(1) to determine the extent to which funds made available to the company for its purposes have been expended in a manner that is consistent with the purposes of this act and the charter of the company; and

(2) to prepare and submit to the Legislature, the State Treasurer, the authority and the other public entities participating in the purchase of stock in the company, an independent certified statement annually containing the findings and determinations of such auditor.

c. In connection with the investment of authority moneys in the company pursuant to this act, solicit other forms of support, such as grants from the federal government or from other public and private sources, and make available its stock for purchase by private entities.

C.34:1B-98 Purpose of company.

6. a. The company shall have as its purpose the making of loans and loan guarantees to small or medium-sized businesses to assist in their export activities. Such loans and loan guarantees shall include, but not be limited to, pre-export financing and working capital loans. The criteria for the making of loans and loan guarantees shall be "transaction" based, that is to say, based upon the project in question rather than upon the assets which the business receiving the loan or loan guarantee possesses.

b. The company shall also have as its purpose the providing of other export-related services as its board may from time to time approve.

c. The company shall also have as an authorized purpose the entering into agreements with financial institutions, to the extent feasible, in order to assist in the making of loans and loan guarantees by the company and in the perfecting of related matters.

d. The company shall actively solicit, to the extent feasible, the involvement of private banks, other lending institutions and the private insurance market to assist the company in the lending process and in providing the export-related services required by small or medium-sized businesses.

C.34:1B-99 Export Finance Company Advisory Council.

7. a. There is established an Export Finance Company Advisory Council in, but not of, the Department of Commerce and Eco-

nomic Development. The council shall be made up of eleven members: one shall be the Commissioner of Commerce and Economic Development, or the commissioner's designee; one shall be the Chairman of the New Jersey Economic Development Authority, or the chairman's designee; three public members shall be appointed by the Governor; three public members shall be appointed by the President of the Senate; and three public members shall be appointed by the Speaker of the General Assembly, one of whom shall be designated by the Speaker as chair of the council. The appointment of the members shall take place within 60 days of the effective date of this act. The appointee of the Speaker of the General Assembly designated as chair of the council shall convene the council as soon as is practicable following the appointment of at least six public members to the council.

b. The members of the council shall serve without compensation.

c. The council is authorized, empowered and directed to:

(1) Develop a form of organization and a plan of operation for the export financing company consistent with the purposes of this act. In so doing the council shall consider, but not be limited to, the form of organization, plan of operation and experiences of local and regional business partnerships organized jointly by the public and private sectors in the State for business development purposes.

(2) Seek out and gain commitments from persons, natural and otherwise, to be initial investors in and incorporators of the export financing company.

(3) Cooperate and coordinate its efforts at gaining public and private sources of equity capital for the establishment of the company with the Department of Commerce and Economic Development.

(4) Investigate the feasibility of gaining additional public sources of equity capital for the establishment of the company from sources which may include, but need not be limited to, other departments and agencies of this State and in other states which are engaged in economic development and which seek to cooperate with the council to assist it in the accomplishment of its mission.

d. Within one year of the effective date of this act, the council shall provide the Governor and the Legislature with information concerning the results of its efforts under subsection c. of this section, the status of the export financing company and the implementation of the goals of this act.

C.34:1B-100 Regional and contractual arrangements encouraged.

8. Nothing in this act shall be construed to prevent the council from developing regional partnerships and contractual arrangements with other states which may be interested in investing in the export financing company in return for gaining access for companies in those states to financial assistance and other services to be provided by the company. The council should strive, to the extent feasible, to develop such partnerships and arrangements in order to broaden the pool of potential public and private investors needed to underwrite the financing of the company.

9. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 210

AN ACT to establish a program in the New Jersey Department of Commerce and Economic Development to promote and develop markets for State goods and services through the use of State and regional business directories, amending and supplementing Title 52 of the Revised Statutes.

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

C.34:1B-101 Short title.

1. This amendatory and supplementary act shall be known and may be cited as the "New Jersey Purchase First Program Act."

C.34:1B-102 Findings, declarations relative to business directories, public-private cooperation.

2. The Legislature finds and declares that:

a. Hearings held by the General Assembly Task Force on Business Retention, Expansion and Export Opportunities revealed that many companies buy products or services from out-of-state businesses because they are unaware that such goods or services are available from companies within this State, often at a substantial discount from the costs of purchasing the same goods or services from out-of-state companies;

b. While the Division of International Trade in the Department of Commerce and Economic Development has developed directories useful for trade purposes which highlight certain selected industries in this State, cutbacks in staff and the limited resources of the department impede its efforts to develop and promote a more comprehensive set of State and regional business directories that could promote the sale of New Jersey's goods and services to other companies within the State as well as to companies in other states and foreign locations; and

c. Given the importance to the State's economy of encouraging the purchase of goods and services from New Jersey businesses, it is in the public interest for the State to place a priority on encouraging the development and use of comprehensive business directories and to undertake public-private cooperation in promoting the purchase of products and services produced in this State.

C.34:1B-103 New Jersey Purchase First Program.

3. There is established, within the Department of Commerce and Economic Development, hereinafter "the department," the New Jersey Purchase First Program, hereinafter "the program." The purpose of the program shall be to promote and develop markets for New Jersey's goods and services by encouraging private sector businesses to produce and distribute comprehensive State and regional business directories, hereinafter, the "directories," and by coordinating its efforts with privately funded campaigns to stimulate and encourage businesses and industries to buy goods and services produced in this State. The program shall be administered by the department in consultation with the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

C.34:1B-104 Development, distribution of directories; "industry sector network" defined.

4. a. In order to implement the purpose of the program, the department shall, within one year of the effective date of this amendatory and supplementary act, consult with New Jersey business groups in order to develop ways to stimulate the development of directories by the private sector. The groups to be consulted may include, but need not be limited to, the New Jersey Business and Industry Association, the New Jersey State Chamber of Commerce, the South Jersey Chamber of Commerce, municipal chambers of commerce, State and local economic development agencies, other local business groups, regional offices of the department, private

sector nonprofit entities organized to promote economic development in the State, and community college associations.

The department shall provide advice, based on its experience in producing departmental business directories, to business and trade groups and associations in order to facilitate the development of comprehensive business directories, to the greatest extent possible, through private sector financing.

b. The directories shall include, but not necessarily be limited to, a catalog of New Jersey manufacturing, supply, distribution and service businesses by product or service description, as appropriate, in a manner to be determined by the commissioner of the department in consultation with the business groups enumerated in subsection a. of this section. The directories shall be available for purchase by businesses throughout the State and outside the State.

c. The department shall encourage private sector businesses, private sector nonprofit entities, regional groups or partnerships and industry sector networks to make the directories available as soon as practicable and to implement steps to inform the business community throughout the State of the benefits of using the directories to purchase goods and services from New Jersey businesses. As used in this section, "industry sector network" means clusters of two or more businesses that are (1) within an industry that makes or could make an important contribution to the economy of the State, which may include, but need not be limited to, healthcare, pharmaceuticals, chemicals, communications, telecommunications, electronics, software, insurance, tourism, transportation, construction, agriculture, and biotechnology, and (2) working jointly to manufacture, sell or market products, develop technologies or create or disseminate information.

5. Section 21 of P.L.1981, c.122 (C.52:27H-20) is amended to read as follows:

C.52:27H-20 Division of Economic Development; powers and duties.

21. The Division of Economic Development shall:

a. Promote and encourage the location and development of new business, industry, and commerce in the State as well as the maintenance and expansion of existing business, industry, and commerce;

b. Promote and encourage the expansion and development of markets for products and services of New Jersey businesses and industries. In promoting and encouraging the expansion and development of those markets, the division shall place a priority on using any business directories developed pursuant to section 4 of P.L.1995, c.210 (C.34:1B-104) to stimulate the purchase of

goods and services produced by New Jersey businesses and industries and shall, to the extent feasible, seek to coordinate the "New Jersey Purchase First Program" established pursuant to section 3 of P.L.1995, c.210 (C.34:1B-103) with partnership campaigns which are privately funded or otherwise supported to promote the purchase of goods and services produced in the State;

c. Conduct or encourage research designed to further new and more extensive uses of the resources of the State, and designed to develop new products and industrial processes;

d. Cooperate with business service organizations, utility companies, railroads, financial institutions and similar groups and agencies actively engaged in economic development within the State and plan its program of work to supplement and support the programs of such voluntary private organizations and agencies;

e. Advise and cooperate with municipal, county, regional and other local agencies and officers within the State, to provide guidance and assistance, when requested, in their efforts toward economic development of their respective areas, and to assist them to make an effective selection of economic promotional activities best suited to their potentialities and needs;

f. Cooperate with other State and interstate agencies engaged in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce; and

g. Investigate, study, and undertake ways and means of promoting or encouraging the prosperous development and protection of the legitimate interests and welfare of New Jersey business and industry within and outside the State.

C.34:1B-105 Report to Governor, Legislature.

6. Within 24 months of the effective date of this amendatory and supplementary act, the commissioner shall report to the Governor and the Legislature on the outcome of the program authorized under this amendatory and supplementary act, including any recommendations regarding the improvement and expansion of the program.

C.34:1B-106 Rules, regulations.

7. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to effectuate the purposes of this amendatory and supplementary act.

8. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 211

AN ACT concerning bias crimes and amending N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:44-3 and P.L.1981, c.282.

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

(b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or

(c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or

(d) Any school board member or school administrator, teacher or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board; or

(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

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily injury to another person.

Aggravated assault under subsection b. (1) and b. (6) is a crime of the second degree; under subsection b. (2) is a crime of the third degree; under subsection b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree.

c. A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. A person who commits a simple assault as defined in subsection a. of this section is guilty of a crime of the fourth degree if the person acted with a purpose to intimidate an individual or

group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

2. N.J.S.2C:33-4 is amended to read as follows:

Harassment.

2C:33-4. Harassment.

Except as provided in subsection d., 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. A person commits a crime of the fourth degree if in committing an offense under this section, he acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity.

3. 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. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime, other than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4, or a violation of N.J.S.2C:14-2 or 2C:14-3 if the grounds for the application is purpose to intimidate because of gender, to an extended term if it finds, by a preponderance of the evidence, the grounds in subsection e. 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, upon application of the prosecutor, if the grounds specified in subsection g. 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 or 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 which is equivalent of 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. The defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity.

f. The defendant has been convicted of a crime under any of the following sections: N.J.S.2C:11-4, N.J.S.2C12-1b., 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.

4. Section 1 of P.L.1981, c.282 (C.2C:33-10) is amended to read as follows:

C.2C:33-10 Putting or attempting to put in fear of violence by placement of symbol or graffiti on property.

1. A person is guilty of a crime of the third degree if he purposely, knowingly or recklessly puts or attempts to put another in fear of bodily violence by placing on private property of another a symbol, an object, a characterization, an appellation or graffiti that exposes another to threats of violence. A person shall not be guilty of an attempt unless his actions cause a serious and imminent likelihood of causing fear of unlawful bodily violence.

5. Section 2 of P.L.1981, c.282 (C.2C:33-11) is amended to read as follows:

C.2C:33-11 Defacement or damage of property by placement of symbol, object or graffiti.

2. A person is guilty of a crime of the fourth degree if he purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons for purpose of exercising any right guaranteed by law or by the Constitution of this State or of the United

States by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence.

6. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 212

AN ACT providing for concurrent criminal jurisdiction between the United States and the State over certain federal properties.

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

C.52:30-12 Concurrent criminal jurisdiction over certain federal properties.

1. a. The State cedes to the United States concurrent criminal jurisdiction over lands and waters within the boundaries of units of the National Park System administered by the United States Department of the Interior, National Park Service, that are within the State, including those owned, leased, or administratively controlled, and those hereafter acquired, leased, or administratively controlled, by the National Park Service.

b. The existing National Park Service units affected by this cession are as follows:

(1) Delaware Water Gap National Recreation Area;
(2) The Sandy Hook Unit of Gateway National Recreation Area;
(3) Morristown National Historic Park;
(4) Thomas Edison National Historic Site; and
(5) Ellis Island.

C.52:30-13 Cession of jurisdiction, when effective.

2. Cession of jurisdiction pursuant to section 1 of P.L.1995, c.212 (C.52:30-12) shall become effective upon acceptance thereof in writing by an authorized official of the United States on behalf of the United States, which shall be transmitted to, and filed in, the office of the Secretary of State of New Jersey, and a copy thereof shall be published in the New Jersey Register.

C.52:30-14 Acceptance of jurisdiction relinquished.

3. Whenever the United States relinquishes all or part of its jurisdiction theretofore held by it over lands and waters within the State, ceded to the United States pursuant to sections 1 and 2 of P.L.1995, c.212 (C.52:30-12 and 52:30-13), the Governor may accept, on behalf of the

State, the jurisdiction so relinquished. The acceptance shall be in writing and shall be transmitted to the authorized official of the United States, and a copy thereof shall be filed with the office of the Secretary of State of New Jersey and published in the New Jersey Register.

4. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 213

AN ACT concerning holders of business permits for electrical work and supplementing P.L.1962, c.162 (C.45:5A-1 et seq.).

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

C.45:5A-9.1 Electrical contractors, letter of credit, liability insurance required.

1. Every person who holds a business permit for electrical work pursuant to P.L.1962, c.162 (C.45:5A-1 et seq.) shall:

a. Secure, maintain and file with the board proof of a bank letter of credit covering the electrical work done pursuant to that business permit or a certificate of general liability insurance from an insurance company authorized and licensed to do business in this State covering the electrical work done pursuant to that business permit. The minimum amount of the bank letter of credit shall be $300,000 for property damage and bodily injury to or death of one or more persons and the minimum amount of general liability insurance shall be $300,000 for the combined property damage and bodily injury to or death of one or more persons in any one accident or occurrence; and

b. File with the board its Federal Tax Identification number.

Every proof of a bank letter of credit or certificate of insurance required to be filed with the board pursuant to this section shall provide that cancellation of the bank letter of credit or insurance shall not be effective unless and until at least 10 days' notice of intention to cancel has been received in writing by the board.

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

Approved August 14, 1995.

CHAPTER 214

AN ACT concerning the payment of pensions and amending P.L.1971, c.179.

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

1. Section 5 of P.L.1971, c.179 (C.43:16-1.2) is amended to read as follows:

C.43:16-1.2 Effective date and payment of pension.

5. A pension granted under the provisions of the act, to which this act is amendatory and supplementary, shall be effective only on the first day of a month, shall be paid in equal monthly installments, and shall not be decreased, increased, revoked or repealed, except as otherwise provided by the statutory law. No pension shall be due to a retirant or beneficiary unless it constitutes a payment for an entire month; provided, however, that a pension shall be payable for the entire month in which the retirant or beneficiary dies.

2. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 215

AN ACT concerning food stamp benefits and amending P.L.1993, c.13.

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

1. Section 1 of P.L.1993, c.13 (C.2C:20-35) is amended to read as follows:

C.2C:20-35 Definitions.

1. As used in this act:

"ATP card" means a document issued by a State or federal agency, to a certified household, to show the food stamp allotment a household is authorized to receive on presentation.

"Benefit card" means a card used or intended for use to access food stamp benefits under the electronic benefit distribution system established pursuant to the "Public Assistance Electronic Benefit Distribution System Act," P.L.1985, c.501 (C.44:10-5.1 et seq.).

"Department" means the Department of Human Services.

"Food stamp coupon" means any coupon or stamp used or intended for use in the purchase of food pursuant to the federal food stamp program, 7 U.S.C.§2011 et seq.

2. Section 2 of P.L.1993, c.13 (C.2C:20-36) is amended to read as follows:

C.2C:20-36 Misuse of food stamp coupons, ATP card, benefit card, value equal or greater than $150.

2. If the face value of food stamp coupons or an ATP card or benefit card is equal to or greater than $150, an individual shall be guilty of a crime of the fourth degree if he purposely or knowingly and without authorization:

a. Receives or uses the proceeds of food stamp coupons or an ATP card or benefit card for which he has not applied or has not been approved by the department to use;

b. Engages in any transaction to convert food stamp coupons or an ATP card or benefit card to other property contrary to federal and State government rules and regulations governing the food stamp program; or

c. Transfers food stamp coupons or an ATP card or benefit card to another person who is not lawfully entitled or approved by the department to use the coupons or ATP card or benefit card.

3. Section 3 of P.L.1993, c.13 (C.2C:20-37) is amended to read as follows:

C.2C:20-37 Misuse of food stamp coupons, ATP card, benefit card, value less than $150.

3. If the face value of food stamp coupons or an ATP card or benefit card is less than $150, an individual shall be guilty of a disorderly persons offense if he purposely or knowingly and without authorization:

a. Receives or uses the proceeds of food stamp coupons or an ATP card or benefit card for which he has not applied or has not been approved, by the department, to use;

b. Engages in any transaction to convert food stamp coupons or an ATP card or benefit card to other property contrary to federal and State government rules and regulations governing the food stamp program; or

c. Transfers food stamp coupons or an ATP card or benefit card to another person who is not lawfully entitled or approved, by the department, to use the coupons or ATP card or benefit card.

4. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 216

AN ACT concerning contracts between local government units and private firms or public authorities for the provision of wastewater treatment services, supplementing Title 58 of the Revised Statutes, and amending P.L.1971, c.198.

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

C.58:27-19 Short title.

1. Sections 1 through 9 of P.L.1995, c.216 (C.58:27-19 through 58:27-27) shall be known and may be cited as the "New Jersey Wastewater Treatment Public-Private Contracting Act."

C.58:27-20 Findings, declarations.

2. The Legislature finds and declares that protecting the ground and surface water of the State from pollution is vital to the health and general welfare of the citizens of New Jersey; that the construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment plants are essential to protecting and improving the State's water quality; that in addition to protecting and improving the State's water quality, adequate wastewater treatment systems are essential to economic growth and development; that many of the wastewater treatment systems in New Jersey must be replaced or upgraded if an inexorable decline in water quality is to be avoided during the coming decades; that the United States Congress in recognition of the crucial role wastewater treatment systems and plants play in maintaining and improving water quality, and with an understanding that the cost of financing and constructing these systems must be borne by local governments and authorities with limited sources of revenues, established a program to provide local governments with grants for constructing these systems; that during the last several years the amount of federal grant money available to states and local governments for assistance in constructing and improving wastewater treatment systems has sharply diminished; that the current level of federal grant funding is inadequate to meet the cost of upgrading the State's wastewater treatment capacity to comply with State water quality standards; that given this inadequate present level of federal grant funding, alternative methods of financing the construction, operation, and improvement of wastewater treatment

systems must be developed and encouraged; that one alternative method of financing necessary wastewater treatment systems available to local governments consists of contracting with private sector firms for the financing, construction and operation of these systems; and that for some local government units, contracting for the provision of wastewater treatment services, if done in such a way as to protect the interests of consumers and to conform with environmental standards, will constitute an appropriate method of securing these needed wastewater treatment systems.

The Legislature further finds that it is in the public interest and the policy of the State to foster and promote by all reasonable means the long-term operation and maintenance of modern, efficient wastewater treatment systems designed to protect and improve the State's water quality thereby ensuring the health and general welfare of all inhabitants of the State; that while the "New Jersey Wastewater Treatment Privatization Act," P.L.1985, c.72 (C.58:27-1 et seq.), enabled local government units to enter into long term contracts with private-sector firms for the provision of wastewater treatment services, the time consuming procedures and the regulatory framework required therein has dissuaded private firms and local government units from entering into long-term contractual relationships as envisioned by this act; that there is a need for an alternative statutory process which enables local government units to enter with private firms or public authorities into long-term contracts that protect the rights and interests of residents of the local government unit, but allow the private firms or public authorities to utilize their expertise, experience and resources to enable the local government unit to comply with existing and more stringent future requirements of the "Federal Water Pollution Control Act," 33 U.S.C.§1251 et seq., the State "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.).

The Legislature therefore determines that it is in the public interest to establish a comprehensive procedure designed to authorize local government units to enter into contracts with private firms or public authorities for the financing, designing, construction, improvement, operation, maintenance, or administration, or any combination thereof, of wastewater treatment systems or for the provision of wastewater treatment services.

C.58:27-21 Definitions.

3. As used in sections 1 through 9 of P.L.1995, c.216 (C.58:27-19 through 58:27-27):

"Concession fee" means a payment from a private firm or a public authority to a public entity, regardless of when it is received, that is exclusive of or exceeds any contractually specified reimbursement of direct costs incurred by the public entity;

"Contract" means a long-term written agreement wherein a private firm or a public authority agrees to provide wastewater treatment services for a public entity and wherein the private firm or public authority agrees to provide, during the term of the contract, capital expenditures on behalf of the public entity's wastewater treatment system, which expenditures are set forth in the contract;

"Department" means the New Jersey Department of Environmental Protection;

"Division" means the Local Finance Board within the Division of Local Government Services in the Department of Community Affairs;

"Governing body" means the board of chosen freeholders in the case of the county; the board of chosen freeholders and the county executive, the county supervisor or the county manager, as appropriate, in the case of a county organized pursuant to the provisions of the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.); the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality, in the case of a municipality; and the decision-making body of an authority, joint meeting or commission;

"Private firm" means any privately or publicly held company qualified to do business in the State of New Jersey that is financially, technically, and administratively capable of providing wastewater treatment services to a public entity under the terms of a contract entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

"Proposal document" means the document prepared by or on behalf of a public entity describing the wastewater treatment services that the public entity is considering having provided by a private firm or a public authority pursuant to a contract. The proposal document shall include specific minimum qualifications that a private firm or a public authority shall meet, as well as the criteria that will be used by a public entity to evaluate a proposal submitted by a private firm or a public authority;

"Public authority" means a municipal or county authority, commission, municipal or county utility authority, sewerage authority, or joint meeting, which is authorized by law to construct, rehabilitate, operate or maintain a wastewater treatment system or arrange for the provision of wastewater treatment service;

"Public entity" means a county, a municipality, a municipal or county authority or any commission or other political subdivision of the State, or any two or more counties, municipalities, municipal or county utilities authorities, sewerage authorities, joint meetings, or any commission or other political subdivisions of the State, acting jointly, that are authorized by law to construct, rehabilitate, operate or maintain wastewater treatment systems or arrange for the provision of wastewater treatment services;

"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 runoff system, or directly into surface or ground waters, or any combination thereof;

"Wastewater treatment services" means the financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a wastewater treatment system, which services are provided pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

"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 public entity for the storage, collection, reduction, recycling, processing, 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 runoff collection systems, and other personal property and appurtenances necessary for their use or operation.

C.58:27-22 Supersedure.

4. Notwithstanding the provisions of any other law, rule or regulation to the contrary, a public entity may enter into a contract with a private firm or a public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the provision of wastewater treatment services.

C.58:27-23 Public notice, review of proposals, contract terms.

5. a. A public entity shall publish notice of its intent to enter into a contract pursuant to P.L.1995, c.216 (C.58:27-19 et al.) in at least one newspaper of general circulation in the jurisdiction or service area that will receive wastewater treatment services under the terms of the contract and one newspaper of broad regional cir-

culation, at least 60 days prior to conducting the public hearing required under section 6 of P.L.1995, c.216 (C.58:27-24).

b. The public notice required under subsection a. of this section shall describe the type of services desired and provide the name, address and phone number of the person who can provide additional information and a proposal document to an interested party. The notice shall specify a deadline, which shall be not less than 30 days from the date of the publication of the notice for the submission of proposals by private firms or public authorities to the public entity. The public entity may at any time revise the proposal document and each private firm or public authority that received a proposal document shall be provided with the revised proposal document.

c. The public entity shall conduct a review of the proposals submitted by private firms and public authorities to determine which proposals meet the minimum qualifications and standards. The review shall be conducted in a manner that avoids disclosure of the contents of a proposal to any private firm and public authority submitting a competing proposal. The public entity may conduct discussions with a private firm and public authority submitting a qualified proposal for the purpose of clarifying the information submitted in the proposal. The public entity may at any time revise its proposal document after the review of the submitted proposals if it notifies simultaneously, and in writing, each private firm and public authority that submitted a proposal of the revision and provides a uniform time within which a firm and an authority may submit a revised proposal for review.

d. The public entity shall select one qualified proposal from among those submitted. The public entity shall negotiate a contract with the private firm or public authority that submitted the selected proposal. If the public entity is unable to negotiate a satisfactory contract with the selected private firm or public authority, it may select another qualified proposal from among those submitted and proceed to negotiate a contract with the private firm or public authority that submitted the proposal. The public entity shall set forth, in writing, the reasons for the selection of the qualified proposal submitted by the private firm or public authority with which the public entity has negotiated a proposed contract and shall make this document available to the public along with the proposed contract, upon request, and during the public hearing conducted pursuant to section 6 of P.L.1995, c.216 (C.58:27-24).

e. A contract entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.) shall include provisions addressing the following:

(1) The charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the public entity for the wastewater treatment services to be provided;

(2) The allocation of the risks of financing and constructing planned capital additions or upgrades to existing wastewater treatment systems;

(3) The allocation of the risks of operating and maintaining the wastewater treatment system;

(4) The allocation of the risks associated with circumstances or occurrences beyond the control of the parties to the contract;

(5) The defaulting and termination of the contract;

(6) The employment of current employees of the public entity whose positions or employment will be affected by the terms of the contract;

(7) The requirements for the provision of a performance bond by the private firm or public authority, if so required by the public entity; and

(8) The financial cost of compliance with all relevant permits.

A contract may contain any other terms and conditions that have been negotiated by the public entity and the private firm or public authority.

f. If a dispute over contract compliance, performance or termination cannot be resolved by the public entity and the private firm or public authority pursuant to the procedures set forth in the contract, either party to the contract may file with the Superior Court which has appropriate jurisdiction a request for an order either to terminate the contract based on the reasons stated in the request or for an order for other appropriate relief to the dispute. The court may take such action as it may deem necessary to facilitate the expeditious resolution of the dispute and an expeditious response to the request, including ordering the parties to undertake a dispute resolution or mediation process. The court shall use, as it deems necessary, the services of a financial expert in the area of wastewater treatment service contracts in its analysis of the contract and the issues before it. Within 90 days after the filing of a request, the court shall either grant the request or deny the request. If the request is granted, the court shall order such appropriate relief measures or remedies as it deems appropriate and necessary.

g. A public entity that has negotiated a contract with a private firm or a public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) shall obtain the written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the public entity given the terms of the contract and the federal laws or regulations concerning this matter.

h. If a public entity entering into a contract pursuant to P.L.1995, c.216 (C.58:27-19 et al.) consists of multiple municipalities, or is an authority subject to the provisions of P.L.1983, c.313 (C.40A:5A-1 et seq.), a concession fee paid by a private firm or public authority as a result of the contract shall be paid directly to the municipality or municipalities that created or constitute that public entity. Any concession fee paid by a private firm or a public authority to a public entity shall be used for the purpose of reducing or off-setting property taxes, reducing wastewater treatment services rates, one-time nonrecurring expenses or capital asset expenditures; provided, however, nothing herein shall preclude the public entity from using all or part of the concession fees for the purpose of the public entity's qualification for relief from the repayment of federal grant awards associated with the wastewater treatment system as may be required by federal law or regulation. Any disagreement as to whether a payment constitutes a concession fee as that term is defined pursuant to section 3 of this act shall be resolved by the division.

C.58:27-24 Public hearing, proceedings.

6. a. A public entity that intends to enter into a contract with a private firm or public authority for the provision of wastewater treatment services pursuant to P.L.1995, c.216 (C.58:27-19 et al.) shall conduct a public hearing on the proposed contract negotiated pursuant to section 5 of P.L.1995, c.216 (C.58:27-23). A public entity shall also conduct a public hearing pursuant to this section on revisions to a contract required by subsection b. of section 7 of P.L.1995, c.216 (C.58:27-25) or on substantial amendments to a contract as required by subsection f. of section 7 of P.L.1995, c.216 (C.58:27-25).

b. The public entity shall provide, at least 14 days prior to the public hearing, (1) notice in writing to the department and the division of its intent to enter into a contract with a private firm or public authority for the provision of wastewater treatment services, and (2) notice of the public hearing by publication in at least one newspaper of general circulation in the jurisdiction or service area of the public entity to be served under the terms of the proposed contract. The publication shall include notice of the date, time and place of the public hearing, notice of the place at which copies of the proposed contract will be available for public inspection, and the times during which such inspection will be permitted. The notice shall specifically state whether any conces-

sion fee will be paid by a private firm or public authority to the public entity as a result of the contract for wastewater treatment services, the monetary amount of the fee and the potential impact of the fee on the charges, rates or fees which will be paid for wastewater treatment services by users in the jurisdiction or service area that will receive the wastewater treatment services pursuant to the terms of the contract.

c. At the public hearing, the public entity shall explain the terms and conditions of the proposed contract and shall answer questions raised by prospective consumers and other interested parties. The public entity shall explain during the hearing the charges, rates or fees that will or may be charged by the public entity for wastewater treatment services as a result of the proposed contract. In addition, the entity shall explain any concession fee to be paid by a private firm or public authority to the public entity as a result of the contract for wastewater treatment services, the monetary amount of the fee and the potential impact of the fee or benefit on the charges, rates or fees which will be paid for wastewater treatment services by users in the jurisdiction or service area that will receive the wastewater treatment services pursuant to the terms of the contract.

d. The public entity shall produce a verbatim record of the public hearing. The record of the public hearing shall be kept open for a period of seven days following the conclusion of the hearing, during which time interested parties may submit written statements to be included in the hearing report. The public entity shall prepare a written hearing report, which shall include a copy of the proposed contract, a copy of the statement setting forth the public entity's reasons for the selection of the proposal submitted by the private firm or public authority with which the entity has negotiated a contract, the verbatim record of the public hearing, written statements submitted by interested parties, a copy of the bond counsel's written opinion required pursuant to subsection g. of section 5 of P.L.1995, c.216 (C.58:27-23) and a statement prepared by the public entity summarizing the major issues raised at the public hearing and the public entity's specific responses to those issues. The public entity shall make copies of the hearing report available to interested parties, upon request, at a cost not to exceed the actual cost of printing or copying.

e. The governing body of a public entity that has negotiated the proposed contract shall adopt an ordinance or a resolution, as appropriate, or parallel ordinances or resolutions, as the case may

be, if there is more than one governing body involved, approving the proposed contract. The ordinance or resolution may be introduced at the first meeting of the governing body of the public entity held after the public hearing on the proposed contract, and shall acknowledge that the agreement requires approval pursuant to the provisions of section 7 of P.L.1995, c.216 (C.58:27-25).

f. Within 30 days after the close of a public hearing on a proposed contract held pursuant to subsection a. of this section and upon at least 10 days prior written notice, the public entity shall submit an application for approval to the division and shall submit the hearing report to the department for review pursuant to the provisions of section 7 of P.L.1995, c.216 (C.58:27-25). The division shall specify the form of the application to be submitted.

C.58:27-25 Approval, conditional approval of application; review of contract.

7. a. Within 60 days of receipt of the application, the division shall approve, or conditionally approve, an application submitted by a public entity pursuant to subsection f. of section 6 of P.L.1995, c.216 (C.58:27-24). Within 60 days of receipt of the hearing report, the department shall provide any comments on the hearing report or on the technical capabilities of the private firm or public authority that it deems appropriate to the division and the public entity. If the division fails to approve or conditionally approves the application within 60 days after receipt, the application shall be deemed approved, unless the public entity has agreed to an extension of the period.

b. If the division conditionally approves the application, the division shall state in writing the revision to the proposed contract that is necessary in order for it to be approved. If the division determines that the required revision is substantial, the public entity shall hold a public hearing on the revision and adhere to the provisions of section 6 of P.L.1995, c.216 (C.58:27-24) in so doing. A substantial revision shall be a change that results in an increase in the charges, rates or fees of the private firm or public authority or that materially changes other terms and conditions of the contract. The proposed revision to the contract shall be submitted to the division and the department 15 days prior to the date of the public hearing.

If the division determines that the required revision in the conditional approval is not substantial, the public entity shall submit the proposed revision to the contract to the division for approval and to the department for review. The revision shall be approved

if found to be consistent with the conditions set forth in the conditional approval, or disapproved with a written explanation as to why the revision is not consistent, within 15 days after the next public meeting of the division.

c. In its review of a contract, the division shall apply the following criteria in determining whether to approve the contract:

(1) The terms of the proposed contract do not materially impair the ability of the public entity to punctually pay principal and interest due on its outstanding indebtedness and to supply other essential public improvements and services;

(2) A concession fee paid by a private firm or a public authority as a result of the contract is paid directly to the municipality or municipalities that created or constitute the public entity, and any concession fee paid by a private firm or a public authority to a public entity is used for the purpose of reducing or off-setting property taxes, reducing wastewater treatment services rates, one-time nonrecurring expenses or capital asset expenditures; and

(3) The contract contains the provisions required by subsection e. of section 5 of P.L.1995, c.216 (C.58:27-23).

The division shall also review and specifically approve any contract provision pursuant to which a public entity will or may execute a financing instrument for the purposes set forth in the contract. In addition, the division shall review any contract between a public entity and public authority in which a concession fee is paid by the public authority to determine if the payment of the concession fee is in the best interest of the parties to the contract.

d. The division may provide the public entity with any nonbinding comments or advice during or after the review of the application as the division deems appropriate.

e. The division shall assess and the applicant shall pay a fee equal to the cost incurred by the division for an analysis of an application by an independent person who has expertise in the area of wastewater treatment services if during the review of an application the division determines that such an analysis is required.

f. If the public entity and private firm or public authority would like to amend a contract after approval of an application by the division, the public entity shall submit proposed amendments to the division for approval and to the department for review. At the next public meeting of the division after receipt of proposed amendments, the division shall determine whether the proposed amendments are substantial. If the amendments are substantial in nature as determined by the division, the public entity shall con-

duct a hearing pursuant to section 6 of P.L.1995, c.216 (C.58:27-24). Within 60 days of the receipt of proposed amendments that are not determined to be substantial, or within 60 days of the receipt of an application for approval of proposed amendments that are determined to be substantial, the division shall approve or conditionally approve the amendments in accordance with the applicable procedures established for approval of an original contract pursuant to this section.

C.58:27-26 Bonds, financing.

8. In order to pay its part of the cost of the wastewater treatment system, a public entity may issue bonds in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. If a public entity enters into a financing instrument the proceeds of which are used by the private firm or public authority for a capital expenditure for the benefit of a wastewater treatment system, the expenditure of the funds provided by the public entity shall be in compliance with applicable public contracting statutes.

C.58:27-27 Procurement of wastewater treatment services prior to enactment.

9. A public entity may enter into a contract with a private firm or public authority for the provision of wastewater treatment services, the procurement for which contract commenced prior to the effective date of P.L.1995, c.216 (C.58:27-19 et al.), if the procurement was initiated in anticipation of the enactment of the act and the procurement otherwise complies with the provisions of the act.

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

C.40A:11-2 Definitions.

2. As used herein the following words have the following definitions, unless the context otherwise indicates:

(1) "Contracting unit" means:

(a) Any county; or

(b) Any municipality; or

(c) Any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter

into contracts or agreements for the performance of any work or the furnishing or hiring of any materials or supplies usually required, the cost or contract price of which is to be paid with or out of public funds.

The term shall not include a private firm that has entered into a contract with a public entity for the provision of water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

"Contracting unit" shall not include a private firm or public authority that has entered into a contract with a public entity for the provision of wastewater treatment services pursuant to P.L.1995, c.216 (C.58:27-19 et al.).

(2) "Governing body" means:

(a) The governing body of the county, when the purchase is to be made or the contract or agreement is to be entered into by, or in behalf of, a county; or

(b) The governing body of the municipality, when the purchase is to be made or the contract or agreement is to be entered into by, or on behalf of, a municipality; or

(c) Any board, commission, committee, authority or agency of the character described in subsection (1) (c) of this section.

(3) "Contracting agent" means the governing body of a contracting unit, or any board, commission, committee, officer, department, branch or agency which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by this act, to make awards for the contracting unit in connection with purchases, contracts or agreements.

(4) "Purchase" is a transaction, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.

(5) "Materials" includes goods and property subject to chapter 2 of Title 12A of the New Jersey Statutes, apparatus, or any other tangible thing, except real property or any interest therein.

(6) "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the performance of work that is original and creative in character in a recognized field of artistic endeavor.

(7) "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(8) "Project" means any work, undertaking, program, activity, development, redevelopment, construction or reconstruction of any area or areas.

(9) "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit.

(10) "Homemaker--home health services" means at home personal care and home management provided to an individual or members of his family who reside with him, or both, necessitated by the individual's illness or incapacity. "Homemaker--home health services" includes, but is not limited to, the services of a trained homemaker.

(11) "Recyclable material" means those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(12) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(13) "Marketing" means the marketing of designated recyclable materials source separated in a municipality which entails a marketing cost less than the cost of transporting the recyclable materials to solid waste facilities and disposing of the materials as municipal solid waste at the facility utilized by the municipality.

(14) "Municipal solid waste" means all residential, commercial and institutional solid waste generated within the boundaries of a municipality.

(15) "Distribution" (when used in relation to electricity) means the process of conveying electricity from a contracting unit who is a generator of electricity or a wholesale purchaser of electricity to retail customers or other end users of electricity.

(16) "Transmission" (when used in relation to electricity) means the conveyance of electricity from its point of generation to a contracting unit who purchases it on a wholesale basis for resale.

(17) "Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage of recyclable materials for all possible uses except for disposal as municipal solid waste.

(18) "Cooperative marketing" means the joint marketing by two or more contracting units within the same county, or adjacent or

proximate counties, of the source separated recyclable materials designated in a district recycling plan required pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative agreement entered into by the participating contracting units thereof.

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

C.40A:11-5 Exceptions.

5. Exceptions. Any purchase, contract or agreement of the character described in section 4 of P.L.1971, c.198 (C.40A:11-4) may be made, negotiated or awarded by the governing body without public advertising for bids and bidding therefor if:

(1) The subject matter thereof consists of:

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

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

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

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

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

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or

its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;

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

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

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

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

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

(l) Election expenses;

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

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

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

(p) Homemaker--home health services performed by voluntary, nonprofit agencies;

(q) The purchase of materials and services for a law library established pursuant to R.S.40:33-14, including books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, copyright and patent materials, maps, charts, globes, sound recordings, slides, films, filmscripts, video and magnetic tapes, and other audiovisual, printed, or published material of a similar nature; necessary binding or rebinding of law library materials; and specialized library services;

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

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

(t) Emergency medical services provided by a hospital to the residents of a municipality or county, provided that: (a) such exception be allowed only after the governing body determines that the emergency services are available only from one provider; and (b) if the contract is awarded without advertising for bids or bidding the governing body shall in each instance state supporting reasons for its action in a resolution awarding the contract and cause to be printed once in a newspaper authorized by law to publish its legal advertisements a brief notice stating the nature, duration, service, and amount of the contract; and (c) the contract shall be kept on file for public inspection in the office of the clerk of the municipality;

(u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor. Each of the aforementioned means of contracting shall be subject to any regulations adopted by the Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);

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

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

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

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

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

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

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

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

(3) The contracting agent has advertised for bids pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) has received no bids on both occasions in response to its advertisement, or (b) the governing body has rejected such bids on two occasions because the contracting agent has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract or agreement may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract or agreement; provided, however, that:

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

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

(iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract or agreement; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negoti-

ate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract or agreement unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible supplier, and is a reasonable price for such work, materials, supplies or services.

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

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

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

15. All purchases, contracts or agreements for the performing of work or the furnishing of materials, supplies or services shall be made for a period not to exceed 12 consecutive months, except that contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) Fuel for heating purposes, for any term not exceeding in the aggregate, two years;

(b) Fuel or oil for use of airplanes, automobiles, motor vehicles or equipment for any term not exceeding in the aggregate, two years;

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment, P.L.1977, c.53.)

(3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management

plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than three years;

(6) Insurance, for any term of not more than three years;

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

(8) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utilities for a term not exceeding five years;

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

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

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

(12) The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations pro-

mulgated by the Department of Environmental Protection establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

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

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except for those contracts otherwise exempted pursuant to subsection (30), (31), (34) or (35) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated,

or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

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

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

tion, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise exempted pursuant to subsection (36) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of materials or services for the purpose of lighting public streets, for a term not to exceed five years, provided that the rates, fares, tariffs or charges for the supplying of electricity for that purpose are approved by the Board of Public Utilities;

(21) In the case of a contracting unit which is a county or municipality, the provision of emergency medical services by a hospital to residents of a municipality or county as appropriate for a term not to exceed five years;

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

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

(24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a public utility company subject to the jurisdiction of the Board of Public Utilities, a similar regulatory body of another state, or a federal regulatory agency, or from a qualifying small power producing facility or qualifying cogeneration facility, as defined by

16 U.S.C.§796, by a contracting unit engaged in the generation of electricity for retail sale, as of the date of P.L.1991, c.407, for a term not to exceed 40 years;

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

(26) Claims administration services, for any term not to exceed three years;

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

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

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

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is entered into later than January 7, 1995, for any term of not more than 40 years;

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

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

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

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

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

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

All multiyear leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), 34, or (35) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19) or 36 above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above, shall contain a clause making

them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

13. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 217

AN ACT concerning the New Jersey Historic Trust, amending P.L.1967, c.124 and P.L.1983, c.562, and supplementing P.L.1991, c.41 (C.13:1B-15.115a et seq.).

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

1. Section 4 of P.L.1967, c.124 (C.13:1B-15.111) is amended to read as follows:

C.13:1B-15.111 New Jersey Historic Trust.

4. There is hereby created and established in but not of the Department of Environmental Protection, a body corporate and politic with corporate succession, to be known as the New Jersey Historic Trust. The trust is hereby constituted an instrumentality exercising public and essential governmental functions, and the exercise by the trust of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

2. Section 3 of P.L.1983, c.562 (C.13:1B-15.112a) is amended to read as follows:

C.13:1B-15.112a Board of Trustees.

3. a. The powers and duties of the New Jersey Historic Trust shall vest in and be exercised by a board of 15 trustees, of whom three shall be the Commissioner of Environmental Protection, the State Treasurer, and the Executive Director of the New Jersey Historical Commission or their respective designees, who shall

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serve ex officio, and 12 shall be citizens of the State, representing the several geographic regions of the State, to be appointed by the Governor with the advice and consent of the Senate. Citizen trustees shall possess a minimum of five years experience in historic preservation, except this requirement shall not apply to any citizen trustee serving on the board on the effective date of P.L.1995, c.217 (C.13:1B-15.115f et al.) for the remainder of the unexpired term of that trustee.

b. Citizen trustees shall serve for three year terms provided, however, that the terms of the four new trustees appointed pursuant to P.L.1995, c.217 (C.13:1B-15.115f et al.) shall begin in the same calendar year as the effective date of that act, and that two of those trustees first appointed shall be appointed for a two-year term and two shall be appointed for a one-year term. Each citizen trustee shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. No citizen trustee may serve more than three consecutive terms, except this restriction shall not apply to terms either completed or commenced prior to the effective date of P.L.1995, c.217 (C.13:1B-15.115f et al.).

c. The trustees shall elect a chairman.

d. Eight trustees shall constitute a quorum, and the concurrence of a majority of the trustees shall be necessary to validate all acts of the board.

3. Section 7 of P.L.1967, c.124 (C.13:1B-15.114) is amended to read as follows:

C.13:1B-15.114 Powers.

7. The New Jersey Historic Trust shall have the power:

a. to sue and be sued in its own name;

b. to adopt a seal and alter it at pleasure;

c. to adopt by-laws for the regulation of its affairs and the conduct of its business, and adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as necessary to implement this act;

d. to maintain an office or offices at such place or places within the State as it may designate;

e. to appoint such officers, who need not be trustees, in addition to a secretary and a treasurer, as the trust shall deem advisable, to establish advisory groups, and to employ such other employees and agents as may be necessary or desirable in its judgment; to fix their compensation; and to promote and discharge such officers, employ-

ees and agents; all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;

f. to acquire in the name of the trust, hold and dispose of personal property in the exercise of its powers and the performance of its duties under this act;

g. to apply for and accept any grant or aid that might be or may become available for programs in furtherance of the trust and the goals of P.L.1967, c.124 (C.13:1B-15.108 et seq.), and to subscribe to and comply with any rule or regulation with respect to the application of such grant or aid, and to enter into and perform any contract or agreement with respect to the application of such grant or aid;

h. to make, enter into and perform all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act. No contract on behalf of the trust shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, if the sum to be expended exceeds the appropriate amount set forth in, or the amount calculated by the Governor pursuant to, section 2 of P.L.1954, c.48 (C.52:34-7), unless the trust first publicly advertises for bids therefor, and awards the contract to the lowest responsible, qualified bidder; but advertising is not required if the contract to be entered into is one for furnishing or performing services of a professional nature, if there is only one source for the product or service being procured, or if the product or service is supplied or rendered by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges made, charged, or exacted by the public utility for such products to be supplied or services to be rendered are filed with the board. The provisions of this subsection shall not prevent the trust from having any work done by its own employees, nor does it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience requires, or the exigency of the circumstances will not admit of such advertisement. In such case the trust shall, by resolution passed by the affirmative vote of a majority of the trustees in attendance, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be expended; and

i. to do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

4. Section 8 of P.L.1967, c.124 (C.13:1B-15.115) is amended to read as follows:

C.13:1B-15.115 Additional powers.

8. The trust shall have power in particular:

a. to accept gifts, legacies, bequests and endowments for any purpose which falls within that of the trust, and to maintain interest-bearing trust accounts for those purposes; and, unless otherwise specified by the person making such gift, legacy, bequest or endowment, the trustees may expend both principal and income of any such gift, bequest, legacy, or endowment in furtherance of the trust or invest it in whole or in part in securities which are legal for trust funds in the State of New Jersey;

b. to acquire and hold real and personal property of historic, aesthetic or cultural significance, by gift, purchase, devise, bequest, or by any other means, and to preserve and administer such properties; and in the acquisition of such properties, to acquire property adjacent thereto deemed necessary for the proper use and administration of historic, aesthetic or cultural property;

c. to apply all moneys, assets, property or other things of value it may receive as an incident to its operation to the general purpose of the trust;

d. to co-operate with and assist, insofar as practicable, any agency of the State or any of its political subdivisions, and any private agency or person in furtherance of the purpose of the trust;

e. to give any moneys or property held by the trust to the Commissioner of Environmental Protection on behalf of the State for purpose of administering, operating or maintaining the historic sites programs of the State of New Jersey; and

f. to report annually to the Governor and the Legislature of the State of New Jersey its activities during the preceding year together with any recommendations or requests it deems appropriate to further the purpose of the trust.

5. Section 9 of P.L.1967, c.124 (C.13:1B-15.116) is amended to read as follows:

C.13:1B-15.116 Trust restrictions.

9. The trust may not acquire, hold, receive or accept any moneys or other property, real or personal, tangible or intangible, which will result in the incurrence of any financial obligations on the part of the State of New Jersey which cannot be supported entirely from funds available in the trust without the express approval of the Commissioner of Environmental Protection or the Legislature.

C.13:1B-15.115f Charge, collection of application fee, appraisal costs.

6. a. The New Jersey Historic Trust may charge and collect an application fee not to exceed $100 to be paid in connection with any application for a loan pursuant to P.L.1991, c.41 (C.13:1B-115a et seq.). All application fees collected pursuant to this subsection shall be deposited into the Historic Preservation Revolving Loan Fund created pursuant to section 1 of P.L.1991, c.41 (C.13:1B-15.115a).

b. In connection with any application for a loan pursuant to P.L.1991, c.41 (C.13:1B-115a et seq.), the New Jersey Historic Trust may require the applicant to pay for the cost of any appraisal, credit investigation or report, survey, or other professional service performed by a third party that is deemed necessary by the trust to properly evaluate the application.

7. This act shall take effect immediately.

Approved August 14, 1995.

CHAPTER 218

AN ACT authorizing the expenditure of funds by the New Jersey Wastewater Treatment Trust for the purpose of making loans to local government units to finance a portion of the costs of construction of wastewater treatment system projects, and supplementing P.L.1985, c.334 (C.58:11B-1 et seq.).

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

1. a. The New Jersey Wastewater Treatment Trust, established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), is authorized to expend the aggregate sum of up to $50,000,000, and any unexpended balance of the aggregate expenditures authorized pursuant to section 1 of P.L.1992, c.37, section 1 of P.L.1993, c.192 and section 1 of P.L.1994, c.105 for the purpose of making loans, to the extent sufficient funds are available, to local government units to finance a portion of the costs of construction of wastewater treatment system projects listed in sections 2, 3 and 4 of this act.

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 the associated debt service reserve fund requirements for such reserve capacity expenses as provided in subsection c. of section 7 of this act; and

(3) the amounts of Pinelands debt service reserve fund expenses required by the trust for projects utilizing funds made available from the "Pinelands Infrastructure Trust Fund" established pursuant to section 14 of P.L.1985, c.302 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;

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

(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) "Pinelands debt service reserve fund expenses" means the amount of debt service reserve funding required for projects partially funded from the "Pinelands Infrastructure Trust Fund" not eligible for loans under rules and regulations governing zero interest loans adopted by the Commissioner of Environmental Protection pursuant to section 4 of P.L.1985, c.329 but which are eligible for loans from the trust in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

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

Project No.	Local Government Unit	Estimated Allowable Project Cost
NJL 708-08-3	Camden County MUA	$2,470,000
S340384-04-1	Musconetcong SA	$1,365,000
S340537-03-1	Mt. Olive Township	$4,290,000
S340794-03-1	Riverside SA	$405,000
S340943-01-1	Mt. Laurel Township MUA	$2,940,000
S340779-02-1	Pequannock River Basin RSA	$620,000
	Total	$12,090,000

b. The loans authorized in this section shall be made for the difference between the allowable loan amounts required by these projects based upon low bid building costs or final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the chairman of the trust in State fiscal years 1988, 1994 and 1995, or for 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). The loans authorized in this section shall be made to the local government units listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as any such project fails to meet the requirements of section 6 of this act.

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

3. a. The New Jersey Wastewater Treatment Trust is authorized to make loans to the local government units for the wastewater treatment system projects listed in section 4 of this act up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the trust pursuant to subsection a. of section 7 of this act, or if a project fails to meet the requirements of section 6 of this act.

b. The trust is authorized to make loans to local government units for partially funded wastewater treatment system projects utilizing funds made available from the "Pinelands Infrastructure Trust Fund" established pursuant to section 14 of P.L.1985, c.302 for the balance of allowable project costs up to the individual amounts indicated, 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 local government units listed below are eligible for funding from the "Pinelands Infrastructure Trust Fund," and 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), for the following wastewater treatment system projects:

Project No.	Local Government Unit	Estimated Allowable Project Cost
PFL 93-1	Winslow Township	$5,640,000
PFL 93-4	Hamilton Township MUA	$2,020,000
	Total	$7,660,000

4. The following wastewater treatment system projects shall be known and may be cited as the "State Fiscal Year 1996 Project Priority List":

Project No.	Local Government Unit	Estimated Allowable Project Cost
S340956-01-A	Delanco Township SA	$935,000
S340956-01-B	Willingboro MUA	1,670,000
S340946-01	Eagleswood Township	150,000
S340818-04	Burlington County Board of Chosen Freeholders	6,485,000
S340809-03	Atlantic County UA	1,180,000
S340895-02	Winslow Township	1,010,000
S340951-01	Washington Township MUA	7,495,000
S340724-04	Morris Township	1,160,000
S340809-04	Atlantic County UA	2,735,000
S340526-13	Gloucester County UA	5,625,000
S340526-14	Gloucester County UA	5,965,000
S340970-01	Moonachie Borough	205,000
S340349-01	Pennsauken Township	30,000
NJL 815-04	Newark City	8,900,000
S340526-04	Logan Township MUA	1,670,000
S340526-12	Mantua Township MUA	880,000
S340351-01	Tewksbury Township	280,000
S340924-02	Clinton Township	158,000
S340640-05	Camden County MUA	2,590,000
PFL 93-01	Winslow Township	5,815,000
PFL 93-04	Hamilton Township MUA	1,380,000
	Total	$56,318,000

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), any proceeds from bonds issued by the trust to make loans for priority wastewater treatment system projects listed in sections 2, 3 and 4 of this act which are not expended for that purpose may be applied for the payment of all or any part of the principal of and interest

and premium on the trust bonds whether due at stated maturity or earlier upon redemption.

A portion of the proceeds from bonds issued by the trust to make loans for priority wastewater treatment system projects pursuant to this act may be applied for the payment of capitalized interest and for the payment of any issuance expenses; for the payment of reserve capacity expenses and the associated debt service reserve fund requirements; for the payment of Pinelands 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 Wastewater Treatment Trust pursuant to this act shall be subject to the following requirements:

a. The chairman of the trust has certified that the project is in compliance with the provisions of P.L.1985, c.334 and any rules and regulations adopted pursuant thereto;

b. The loan shall be conditioned upon approval of a zero interest loan from the Department of Environmental Protection from the "Wastewater Treatment Fund" established pursuant to the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329; or approval of a grant or loan from the department from the "Pinelands Infrastructure Trust Fund" established pursuant to section 14 of P.L.1985, c.302;

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 wastewater treatment system, exclusive of capitalized interest and issuance expenses as provided in subsection b. of section 7 of this act, reserve capacity expenses and the associated debt service reserve fund requirements as provided in subsection c. of section 7 of this act, Pinelands debt service reserve fund expenses as provided in subsection d. of section 7 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 at or below the interest rate paid by the trust on the bonds issued to make the loans authorized by this act, adjusted for underwriting discount, in accordance with the terms and conditions set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21); and

f. The loan shall be subject to all other terms and conditions as the trust shall determine to be consistent with the provisions of

P.L.1985, c.334 (C.58:11B-1 et seq.) and any rules and regulations adopted pursuant thereto, and with the financial plan required by section 21 of P.L.1985, c.334 (C.58:11B-21).

The priority list and authorization for the making of loans pursuant to this act shall expire on July 1, 1996, and any local government unit which has not executed and delivered a loan agreement with the trust for a loan authorized in this act shall no longer be entitled to that loan.

7. a. The New Jersey Wastewater Treatment Trust is authorized to reduce the individual amount of loan funds made available to local government units pursuant to sections 2, 3 and 4 of this act based upon low bid building costs or final building costs defined in and determined in accordance with rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The trust is authorized to use any such reduction in the loan amount made available to a local government unit to cover that local government unit's increased costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

b. The trust is authorized to increase each loan amount authorized in sections 2, 3 and 4 of this act by the amount of capitalized interest and issuance expenses allocable to each loan made by the trust pursuant to this act; provided that the increase for issuance expenses, excluding underwriters' discount, municipal bond insurance premiums and bond rating agency fees, shall not exceed 0.4% of the principal amount of trust bonds issued to make loans authorized by this act.

c. The trust is authorized to increase each loan amount authorized in sections 2, 3 and 4 of this act by the amount of reserve capacity expense, including the debt service reserve fund requirement associated with such reserve capacity expense, as may be allowed the project by the trust in accordance with rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

d. The trust is authorized to increase the project loan amount for Project No. PFL 93-01 (Winslow Township: $5,640,000) or Project No. PFL 93-04 (Hamilton Township MUA: $2,020,000) authorized in section 3 of this act by the amount of the Pinelands debt service reserve fund expenses in accordance with rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

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

9. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 219

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

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

1. a. There is appropriated to the Department of Environmental Protection from the "Wastewater Treatment Fund - State Revolving Fund Accounts" (hereinafter referred to as the "State Revolving Fund Accounts") contained within the "Wastewater Treatment Fund" and established pursuant to section 1 of P.L.1988, c.133 an amount not exceeding $50,333,085 in federal funds and any fees and penalties received pursuant to the "Marine Protection, Research, and Sanctuaries Act of 1972," (33 U.S.C.§1401 et seq.), and any amendatory and supplementary acts thereto, as may be deposited in the State Revolving Fund Accounts. Any such amount shall be for the purpose of making zero interest loans, to the extent sufficient funds are available, to local government units to finance a portion of the costs of construction of wastewater treatment system projects listed in sections 2 and 3 of this act, and for the purpose of implementing and administering the provisions of this act, to the extent permitted by the "Water Quality Act of 1987" (33 U.S.C.§1251 et seq.), the "Marine Protection, Research, and Sanctuaries Act of 1972," and any amendatory and supplementary acts thereto, and State law.

b. The department is authorized to make zero interest loans to the local government units for the wastewater treatment system projects listed in sections 2 and 3 of this act up to the individual amounts indicated and in the priority stated, except as any such

amount may be reduced by the Commissioner of Environmental Protection pursuant to section 6 of this act, or if a project fails to meet the requirements of section 4 of this act.

c. The department is also authorized to make zero interest loans to the local government units for the wastewater treatment system projects listed in sections 2 and 3 of this act under the same terms, conditions and requirements as set forth in this section from any unexpended balances of the amounts appropriated pursuant to section 1 of P.L.1987, c.200, section 2 of P.L.1988, c.133, section 1 of P.L.1989, c.189, section 1 of P.L.1990, c.99, section 1 of P.L.1991, c.325, section 1 of P.L.1992, c.38, section 1 of P.L.1993, c.193 or section 1 of P.L.1994, c.106, including amounts resulting from the low bid building cost or final building cost reductions authorized pursuant to section 6 of P.L.1987, c.200, section 7 of P.L.1988, c.133, section 6 of P.L.1989, c.189, section 6 of P.L.1990, c.99, section 6 of P.L.1991, c.325, section 6 of P.L.1992, c.38, section 6 of P.L.1993, c.193 and section 6 of P.L.1994, c.106, and from any repayments of loans deposited in the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, including any State Revolving Fund Accounts contained within the "Wastewater Treatment Fund."

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

Project No.	Local Government Unit	Estimated Allowable Project Cost
NJL 708-08-3	Camden County MUA	$2,470,000
S340384-04-1	Musconetcong SA	$1,365,000
S340537-03-1	Mt. Olive Township	$4,290,000
S340794-03-1	Riverside SA	$405,000
S340943-01-1	Mt. Laurel Township MUA	$2,940,000
S340779-02-1	Pequannock River Basin RSA	$620,000
	Total	$12,090,000

b. The loans authorized in this section shall be made for the difference between the allowable loan amounts required by these projects based upon low bid building costs or final building costs pursuant to section 6 of this act and the loan amounts certified by the commissioner in State fiscal years 1988, 1994 and 1995 or for increased costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to sec-

tion 4 of P.L.1985, c.329. The loans authorized in this section shall be made to the local government units listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as any such project fails to meet the requirements of section 4 of this act.

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

3. The following wastewater treatment system projects shall be known and may be cited as the "State Fiscal Year 1996 Project Priority List":

Project No.	Local Government Unit	Estimated Allowable Project Cost
S340956-01-A	Delanco Township SA	$935,000
S340956-01-B	Willingboro MUA	1,670,000
S340927-02	Hammonton Town of	3,530,000
S340946-01	Eagleswood Township	150,000
S340818-04	Burlington County Board of Chosen Freeholders	6,485,000
S340809-03	Atlantic County UA	1,180,000
S340895-02	Winslow Township	1,010,000
S340951-01	Washington Township MUA	7,495,000
S340724-04	Morris Township	1,160,000
S340809-04	Atlantic County UA	2,735,000
S340526-13	Gloucester County UA	5,625,000
S340526-14	Gloucester County UA	5,965,000
S340970-01	Moonachie Borough	205,000
S340349-01	Pennsauken Township	30,000
NJL 815-04	Newark City	8,900,000
S340526-04	Logan Township MUA	1,670,000
S340526-12	Mantua Township MUA	880,000
S340351-01	Tewksbury Township	280,000
S340924-02	Clinton Township	158,000
S340640-05	Camden County MUA	2,590,000
PFL 93-01	Winslow Township	5,815,000
PFL 93-04	Hamilton Township MUA	1,380,000
	Total	$59,848,000

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.1985, c.329 and any rules and regulations adopted pursuant thereto;

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

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

d. The loan shall be conditioned upon approval of a loan from the New Jersey Wastewater Treatment Trust pursuant to P.L.1995, c.218; except that this requirement shall not apply to Project No. S340927-02 (Town of Hammonton: $3,530,000), for which a loan has been made by the trust pursuant to P.L.1992, c.37 for both phases of this local government unit's wastewater treatment system project;

e. The loan shall be subject to any other terms and conditions as may be established by the commissioner and approved by the State Treasurer, which may include, notwithstanding any other provision of law to the contrary, subordination of a loan authorized in this act to loans made by the trust pursuant to P.L.1995, c.218 or to administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5).

5. The priority list and authorization for the making of loans pursuant to sections 2 and 3 of this act shall expire on July 1, 1996, and any local government unit which has not executed and delivered a loan agreement with the department for a loan authorized in this act shall no longer be entitled to that loan.

6. The Commissioner of Environmental Protection is authorized to reduce the individual amount of loan funds made available to local government units pursuant to sections 2 and 3 of this act based upon low bid building costs or final building costs defined in and determined in accordance with rules and regulations adopted by the commissioner pursuant to section 4 of P.L.1985, c.329.

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

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

9. a. (1) Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, repayments of loans made pursuant to this act may be utilized by the New Jersey Wastewater Treatment Trust established pursuant

to P.L.1985, c.334 (C.58:11B-1 et seq.) under terms and conditions established by the commissioner and trust, and approved by the State Treasurer, and consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) and federal tax law, to the extent necessary to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.1995, c.218, and to secure the administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the local government units receiving trust loans.

(2) Prior to repayment to the "Pinelands Infrastructure Trust Fund" pursuant to the provisions of section 5 of P.L.1985, c.302, repayments of loans made pursuant to this act may be utilized by the trust under terms and conditions established by the commissioner and trust, and approved by the State Treasurer, and consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) and federal tax law, to the extent necessary to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.1995, c.218, and to secure the administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the local government units receiving trust loans.

b. 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 or P.L.1995, c.219 may be utilized by the trust to secure repayment of trust bonds issued to finance loans approved 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 or P.L.1995, c.218, 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 secure trust bond repayments or administrative fee payments, the trust shall repay such sums to the department for deposit into the "Wastewater Treatment Fund" or the "Pinelands Infrastructure Trust Fund," as appropriate.

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

11. a. The Director of the Division of Budget and Accounting in the Department of the Treasury is directed to transfer to the "Wastewater Treatment Fund" the entire sum of money, if any,

appropriated to the Department of Environmental Protection for "Public Wastewater Facilities" in the "State Aid" section of P.L.1995, c.164. The sum transferred to the "Wastewater Treatment Fund" pursuant to this section is appropriated to the New Jersey Wastewater Treatment Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.). The trust shall deposit all or a portion of this sum as it may deem necessary and appropriate into one or more reserve funds established pursuant to section 11 of P.L.1985, c.334 (C.58:11B-11). These reserve funds shall include reserve funds constituted collectively as a water pollution control revolving fund for the purposes of the federal "Water Quality Act of 1987" and shall be known as the Trust Reserve Fund - State Revolving Fund Accounts; except that the trust shall not establish the Trust Reserve Fund - State Revolving Fund Accounts prior to the execution of a capitalization grant agreement entered into by the Commissioner of Environmental Protection pursuant to section 10 of this act.

b. Any portion of the sum appropriated to the trust pursuant to subsection a. of this section or subsection a. of section 11 of P.L.1989, c.189, subsection a. of section 11 of P.L.1990, c.99, subsection a. of section 11 of P.L.1991, c.325, subsection a. of section 11 of P.L.1992, c.38, subsection a. of section 11 of P.L.1993, c.193 or subsection a. of section 11 of P.L.1994, c.106, plus any net earnings received from the investment or deposit of such moneys by the trust not required by the trust to establish reserve funds as provided in this section, shall be returned to the "Wastewater Treatment Fund" and placed in any account therein as determined by the commissioner to be used by the department for making zero interest loans to local government units to finance a portion of the cost of the wastewater treatment system projects listed in sections 2 and 3 of this act up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the commissioner pursuant to section 6 of this act or if a project fails to meet the requirements of section 4 of this act; and except that the commissioner shall certify to the chairman of the trust that such funds are needed for zero interest loans before any transfer is made. In the event that the commissioner fails to make this certification, the unexpended balance not devoted to establishing reserve funds shall remain with the trust but shall not be expended by the trust until such expenditure is authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.).

12. There is appropriated to the New Jersey Wastewater Treatment Trust established pursuant to P.L.1985, c.334 (C.58:11B-1

et seq.) from repayments of loans deposited in any account, including the State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," and from any net earnings received from the investment and reinvestment of such deposits, such sums as the chairman of the trust shall certify to the Commissioner of Environmental Protection to be necessary and appropriate for deposit into one or more reserve funds including the Trust Reserve Fund - State Revolving Fund Accounts established pursuant to section 11 of P.L.1985, c.334 (C.58:11B-11) and section 1 of P.L.1988, c.133; except that the certification shall not be made with respect to the Trust Reserve Fund - State Revolving Fund Accounts prior to the execution of a capitalization grant agreement entered into by the commissioner pursuant to section 10 of this act.

13. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 220

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

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

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

C.58:11B-6 Issuance of bonds, notes, other obligations.

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

the establishment or increase of reserves or other funds to secure or to pay the bonds, notes or other obligations or interest thereon and all other costs or expenses of the trust incident to and necessary to carry out its corporate purposes and powers.

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

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

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

All bonds of the trust shall be sold at such price or prices and in such manner as the trust shall determine, after notice of sale, 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 notice to be at least five days prior to the day of bidding. The notice of sale may contain a provision to the effect that any or all bids made in pursuance thereof may be

rejected. In the event of such rejection or of failure to receive any acceptable bid, the trust, at any time within 60 days from the date of such advertised sale, may sell such bonds at private sale upon terms not less favorable to the State than the terms offered by any rejected bid. The trust may sell all or part of the bonds of any series as issued to any State fund or to the federal government or any agency thereof, at private sale, without advertisement.

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

f. Bonds, notes or other obligations of the trust issued under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) shall not be a debt or liability of the State or of any political subdivision thereof other than the trust and shall not create or constitute any indebtedness, liability or obligation of the State or any political subdivision, but all these bonds, notes and other obligations, unless funded or refunded by bonds, notes or other obligations, shall be payable solely from revenues or funds pledged or available for their payment as authorized in P.L.1985, c.334 (C.58:11B-1 et seq.). Each bond, note and obligation shall contain on its face a statement to the effect that the trust is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts or funds pledged or available for their payment as authorized in P.L.1985, c.334 (C.58:11B-1 et seq.) and that neither the State, nor any political subdivision thereof, is obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the State, or any political subdivision thereof, is pledged to the payment of the principal of or the interest on the bonds, notes or other obligations.

g. The aggregate principal amount of bonds, notes or other obligations, including subordinated indebtedness of the trust, shall not exceed $600,000,000.00, except that, for the purpose of implementing the Fiscal Year 1996 Financial Plan as approved by the Legislature pursuant to SCR No. 105 of 1995 and ACR No. 15 of 1995, and in compliance with subsection j. of this section, the trust may exceed the foregoing limitations. In computing the foregoing limitations there shall be excluded all the bonds, notes or other obligations, including subordinated indebtedness of the trust, which shall be issued for

refunding purposes, whenever the refunding shall be determined to result in a debt service savings, as hereinafter provided:

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

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

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

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

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

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

(1) Pledge of revenues and other receipts to be derived from the payment of the interest on and principal of notes, bonds or other obligations issued to the trust by one or more local government units, and any other payment made to the trust pursuant to agree-

ments with any local government units, or a pledge or assignment of any notes, bonds or other obligations of any local government unit and the rights and interest of the trust therein;

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

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

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

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

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

j. For the purpose of implementing the Fiscal Year 1996 Financial Plan as approved by the Legislature pursuant to SCR No. 105 of 1995 and ACR No. 15 of 1995, the trust shall provide the Senate Budget and Appropriations and the Assembly Appropriations Committee, or their successors, with a detailed statement by the trust of the costs of issuance of any bonds issued to implement the Fiscal Year 1996 Financial Plan, within thirty days of the issuance thereof, with specific reference, where applicable, to itemized costs for the following services:

(1) bond counsel, tax counsel and special counsel;

(2) financial advisor;

(3) paying agent and registrar;

(4) rating agencies;

(5) official statement printing;

(6) bond printing;

(7) trustee;

(8) credit enhancement;

(9) liquidity facility; and

(10) miscellaneous issuance costs; and

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

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

2. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 221

AN ACT concerning retirement benefits under the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System of New Jersey, amending N.J.S.18A:66-47, amending and supplementing P.L.1954, c.84 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:66-47 is amended as follows:

Teacher's retirement allowance options.

18A:66-47. At the time of his retirement a member shall receive his benefits in a retirement allowance payable throughout life, or he may on retirement elect to receive the actuarial equivalent of his retirement allowance, in a lesser retirement allowance payable throughout life, with the provision that:

Option 1. If he dies before he has received in payments the present value of his retirement allowance as it was at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation acknowledged and filed with the retirement system, either in lump sum or by equal payments over a period of years at the option of the payee. If the member shall have designated a natural

person as a payee, said payee may elect to receive such payments in the form of a life annuity.

Option 2. Upon his death, his retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement system at the time of his retirement.

Option 3. Upon his death, one-half of his retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement system at the time of his retirement.

Option 4. Some other benefit or benefits shall be paid either to the member or to whomever he nominates, if such other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value. In no case, however, shall the lesser retirement allowance be smaller than that provided under Option 2.

If the total amount of benefits paid to a retirant who does not elect to receive his benefits in the form of an optional settlement, or to the retirant and the designated beneficiary in the case of a retirant who does so elect, before the death of the retirant or the retirant and the beneficiary is less than the deductions accumulated in the retirant's account at the time of retirement, including regular interest, the balance shall be paid in one lump sum to the retirant's designated beneficiary or estate in the manner provided in N.J.S.18A:66-48.

Except in the case of members who have elected to receive (1) a deferred retirement allowance pursuant to section 18A:66-36 or (2) early retirement allowances pursuant to section 18A:66-37 after separation from service pursuant to section 18A:66-36, if a member dies within 30 days after the date of retirement or the date of board approval, whichever is later, his retirement allowance shall not become effective and he shall be considered an active member at the time of death. However, if the member dies after the date the application for retirement was filed with the system, the retirement will become effective if:

a. (Deleted by amendment, P.L.1995, c.221);

b. (Deleted by amendment, P.L.1995, c.221);

c. The deceased member had designated a beneficiary under an optional settlement provided by this section; and

d. The surviving beneficiary requests in writing that the board make such a selection. Upon formal action by the board approving that request, the request shall become irrevocable.

The board may select an Option 3 settlement, on behalf of the beneficiary of a member who applied for and was eligible for retirement but who died prior to the effective date of the retirement allowance, if all of the above conditions, with the exception of c., are met.

2. Section 50 of P.L.1954, c.84 (C.43:15A-50) is amended to read as follows:

C.43:15A-50 Public employee pension options.

50. At the time of his retirement, a member shall receive his benefits in a retirement allowance payable throughout life, or he may, on retirement, elect to receive the actuarial equivalent of his retirement allowance, in a lesser retirement allowance payable throughout life, with the provision that:

Option 1. If he dies before he has received in payments the present value of his retirement allowance as it was at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation acknowledged and filed with the retirement system, either in a lump sum or by equal payments over a period of years at the option of the payee. If the member shall have designated a natural person as the payee, said payee may elect to receive such payments in the form of a life annuity.

Option 2. Upon his death, his retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement system at the time of his retirement.

Option 3. Upon his death, one-half of his retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement system at the time of his retirement.

Option 4. Some other benefit or benefits shall be paid either to the member or to whomever he nominates, if such other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value. In no case, however, shall the lesser retirement allowance be smaller than that provided under Option 2.

If the total amount of benefits paid to a retirant who does not elect to receive his benefits in the form of an optional settlement, or to the retirant and the designated beneficiary in the case of a retirant who does so elect, before the death of the retirant or the retirant and the beneficiary is less than the deductions accumu-

lated in the retirant's account at the time of retirement, including regular interest, the balance shall be paid in one lump sum to the retirant's designated beneficiary or estate in the manner provided in section 51 of P.L.1954, c.84 (C.43:15A-51).

Except in the case of members who have elected to receive (1) a deferred retirement allowance pursuant to section 38 (C.43:15A-38) or (2) early retirement allowances pursuant to subsection b. of section 41 (C.43:15A-41) after separation from service pursuant to section 38, if a member dies within 30 days after the date of retirement or the date of board approval, whichever is later, his retirement allowance shall not become effective and he shall be considered an active member at the time of death. However, if the member dies after the date the application for retirement was filed with the system, the retirement will become effective if:

a. (Deleted by amendment, P.L.1995, c.221);

b. (Deleted by amendment, P.L.1995, c.221);

c. The deceased member had designated a beneficiary under an optional settlement provided by this section; and

d. The surviving beneficiary requests in writing that the board make such a selection. Upon formal action by the board approving that request, the request shall be irrevocable.

The board may select an Option 3 settlement, on behalf of the beneficiary of a member who applied for and was eligible for retirement but who died prior to the effective date of the retirement allowance, if all of the above conditions, with the exception of c., are met.

C.18A:66-47.3 Applicability of N.J.S.18A:66-47.

3. N.J.S.18A:66-47 as amended by section 1 of P.L.1995, c.221 shall apply to a filing for retirement received by the retirement system on or after January 1, 1992, except it shall not apply in a situation in which benefits were paid prior to the effective date of P.L.1995, c.221 to any beneficiary other than or in addition to the beneficiary who would be eligible for benefits under N.J.S.18A:66-47 as amended by section 1 of P.L.1995, c.221. Benefits payable under N.J.S.18A:66-47 as amended by section 1 of P.L.1995, c.221 on a filing for retirement received by the retirement system prior to the effective date of P.L.1995, c.221 shall be adjusted, if necessary, to account for an insurance benefit or return of contributions paid on behalf of the member prior to the effective date of P.L.1995, c.221, and the amount of a retirement allowance or insurance benefit payable may be reduced, so that the total amount of benefit paid on behalf of the member

shall not exceed the value of the benefit to which the member or beneficiary would have been entitled if P.L.1995, c.221 had been in effect on the date of the filing for retirement.

C.43:15A-50.2 Applicability of C.43:15A-50.

4. Section 50 of P.L.1954, c.84 (C.43:15A-50) as amended by section 2 of P.L.1995, c.221 shall apply to a filing for retirement received by the retirement system on or after January 1, 1992, except it shall not apply in a situation in which benefits were paid prior to the effective date of P.L.1995, c.221 to any beneficiary other than or in addition to the beneficiary who would be eligible for benefits under section 50 of P.L.1954, c.84 (C.43:15A-50) as amended by section 2 of P.L.1995, c.221. Benefits payable under section 50 of P.L.1954, c.84 (C.43:15A-50) as amended by section 2 of P.L.1995, c.221 on a filing for retirement received by the retirement system prior to the effective date of P.L.1995, c.221 shall be adjusted, if necessary, to account for an insurance benefit or return of contributions paid on behalf of the member prior to the effective date of P.L.1995, c.221, and the amount of a retirement allowance or insurance benefit payable may be reduced, so that the total amount of benefit paid on behalf of the member shall not exceed the value of the benefit to which the member or beneficiary would have been entitled if P.L.1995, c.221 had been in effect on the date of the filing for retirement.

5. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 222

AN ACT concerning the authority of limited liability companies to merge or consolidate with other business entities and amending P.L.1993, c.210.

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

1. Section 20 of P.L.1993, c.210 (C.42:2B-20) is amended to read as follows:

C.42:2B-20 "Other business entity" defined; merger, consolidation.

20. a. As used in this section, "other business entity" means a corporation, or a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership, and a foreign limited liability company, but excluding a domestic limited liability company.

b. (1) Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic limited liability companies or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the operating agreement, a merger or consolidation shall be approved by the members of each domestic limited liability company which is to merge or consolidate or, if there is more than one class or group of members, then by each class or group of members who under the provisions of the operating agreement are entitled to vote, in either case, by members who own more than 50 percent (unless a higher percentage is specified in the operating agreement) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(2) A domestic limited liability company may not merge or consolidate with an other business entity if authority for such

merger or consolidation is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the merger or consolidation of domestic limited liability companies, each domestic limited liability company shall comply with the provisions of this section and each other business entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. If a domestic limited liability company merges or consolidates under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State. The Secretary of State shall, upon filing, forward a copy of the certificate of merger or consolidation to the Director of the Division of Taxation. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited liability company or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a domestic limited liability company, or a corporation or limited partnership organized under the laws of this State, a statement that such surviving or resulting other business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing

the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State.

d. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

e. A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

f. An agreement of merger or consolidation approved in accordance with subsection b. of this section may (1) effect any amendment to the operating agreement or (2) effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the operating agreement of the surviving or resulting limited liability company.

g. When any merger or consolidation becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of those domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or

consolidated, and the title to any real property vested by deed or otherwise, under the laws of this State, in any of those domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of any of those domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of those domestic limited liability companies and other business entities that have merged or consolidated shall attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs under section 50 of this act or pay its liabilities and distribute its assets under section 51 of this act.

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

Approved August 15, 1995.

CHAPTER 223

AN ACT allowing partnerships to merge or consolidate with certain other business entities and supplementing chapter 1 of Title 42 of the Revised Statutes.

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

C.42:12-49 "Other business entity" defined; partnerships, mergers, consolidations.

1. a. As used in this section, "other business entity" means a business corporation, partnership, or a limited liability company.

b. (1) Pursuant to an agreement of merger or consolidation, a partnership may merge or consolidate with or into one or more partnerships or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction, with such part-

nership or other business entity as the agreement shall provide being the surviving or resulting partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by all partners of each partnership which is to merge or consolidate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a partnership or other business entity which is not the surviving or resulting partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(2) A partnership may not merge or consolidate with any other business entity if authority for such merger or consolidation is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the merger or consolidation of partnerships, each partnership shall comply with the provisions of this section and each other business entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. If a partnership merges or consolidates under this section, the partnership or other business entity surviving or resulting in, or from the merger or consolidation, shall file a certificate of merger or consolidation in the office of the Secretary of State. The Secretary of State shall, upon filing, forward a copy of the certificate of merger or consolidation to the Director of the Division of Taxation. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the partnerships or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the partnerships or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting partnership or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting partnership or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting partnership or other business entity, on request and without cost, to any member of any partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a partnership or other business entity organized under the laws of this State, a statement that such surviving or resulting other business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of any partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State.

d. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

e. A certificate of merger or consolidation shall act as a certificate of cancellation for a partnership which is not the surviving or resulting entity in the merger or consolidation.

f. An agreement of merger or consolidation approved in accordance with subsection b. of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a partnership if it is the surviving or resulting partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective at the time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent partnership to the

merger or consolidation (including a partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting partnership.

g. When any merger or consolidation becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges and powers of each of the partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those partnerships and other business entities, as well as all other things and causes of action belonging to each of those partnerships and other business entities, shall be vested in the surviving or resulting partnership or other business entity, and shall thereafter be the property of the surviving or resulting partnership or other business entity as they were of each of the partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this State, in any of those partnerships and other business entities, shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of any of those partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of those partnerships and other business entities that have merged or consolidated shall attach to the surviving or resulting partnership or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a partnership, including a partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require the dissolution of the partnership pursuant to R.S.42:1-31 or require the partnership to pay its liabilities and distribute its assets pursuant to R.S.42:1-40.

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

Approved August 15, 1995.

CHAPTER 224

AN ACT allowing limited partnerships to merge or consolidate with certain other business entities and supplementing P.L.1983, c.489 (C.42:2A-1 et seq.).

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

C.42:2A-73 "Other business entity" defined; domestic limited partnership, merger, consolidation.

1. a. As used in this section, "other business entity" means a business corporation, partnership or a limited liability company.

b. (1) Pursuant to an agreement of merger or consolidation, a domestic limited partnership may merge or consolidate with or into one or more domestic limited partnerships or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved as follows: by each domestic limited partnership which is to merge or consolidate (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited partnership or other business entity which is not the surviving or resulting limited partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(2) A domestic limited partnership may not merge or consolidate with any other business entity if authority for such merger or

consolidation is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the merger or consolidation of domestic limited partnerships, each domestic limited partnership company shall comply with the provisions of this section and each other business entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. If a domestic limited partnership merges or consolidates under this section, the domestic limited partnership or other business entity surviving or resulting in, or from the merger or consolidation, shall file a certificate of merger or consolidation in the office of the Secretary of State. The Secretary of State shall, upon filing, forward a copy of the certificate of merger or consolidation to the Director of the Division of Taxation. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic limited partnerships or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited partnerships or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited partnership or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any member of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a domestic limited partnership, or other business entity organized under the laws of this State, a statement that such surviving or resulting other business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or pro-

ceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State.

d. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

e. A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation.

f. An agreement of merger or consolidation approved in accordance with subsection b. of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a limited partnership if it is the surviving or resulting limited partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective at the time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting limited partnership.

g. When any merger or consolidation becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of those domestic limited partnerships and other business entities, shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged or consolidated, and the title to any real

property vested by deed or otherwise, under the laws of this State, in any of those domestic limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of any of those domestic limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of those domestic limited partnerships and other business entities that have merged or consolidated shall attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited partnership to wind up its affairs pursuant to section 50 of P.L.1983, c.489 (C.42:2A-51) or pay its liabilities and distribute its assets pursuant to section 53 of P.L.1983, c.489 (C.42:2A-54).

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

Approved August 15, 1995.

CHAPTER 225

AN ACT concerning bus safety compliance penalties and supplementing chapter 4 of Title 48 of the Revised Statutes.

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

C.48:4-2.1c Short title.

1. This act shall be known and may be cited as the "Bus Safety Compliance Act."

C.48:4-2.1d Findings, determinations on bus safety.

2. The Legislature finds that bus safety is of paramount importance to the residents of this State, to those travelling on the public highways or in public places within the State, and to the many tourists and travellers who visit this State's many diverse tourist and business destinations. The Legislature further finds that,

to promote and assure the highest possible level of bus safety, it is necessary to establish statutory sanctions and penalties for bus safety out-of-service violations. The Legislature, therefore, determines that it is in the public interest to enact such sanctions and to provide for their enforcement through the Department of Transportation.

C.48:4-2.1e Definitions.

3. As used in this act:

"Bus" or "buses" means and includes all autobuses, of whatever size or configuration, under the jurisdiction of the Department of Transportation; all autobuses of NJ Transit and its contract carriers which are under the inspection jurisdiction of the department; all autobuses of whatever size or configuration, that are subject to Federal Motor Carrier Safety Regulations, operated on public highways or in public places in this State; and all autobuses operated on public highways or in public places in this State under the authority of the Interstate Commerce Commission, or its successor agency.

"Bus safety out-of-service violation" means any serious mechanical, electrical or vehicular condition that is determined to be so unsafe as to potentially cause an accident or breakdown, or would potentially contribute to loss of control of the vehicle by the driver.

"Category 1 violation" means any bus safety out-of-service violation that should have been detected during the daily pre-trip inspection or during periodic repair and maintenance procedures conducted by the driver or the operator.

"Category 2 violation" means any bus safety out-of-service violation that may have occurred after the daily pre-trip inspection and therefore might not have been detected by the operator or driver during the daily pre-trip inspection or during periodic repair and maintenance procedures.

"Operator" means the person responsible for the day to day maintenance and operation of buses.

C.48:4-2.1f Bus safety out-of-service violations; schedule, sanctions established.

4. a. The Commissioner of Transportation shall establish by regulation, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a schedule of bus safety out-of-service violations and applicable sanctions and penalties for buses operating with bus safety out-of-service violations. The regulations shall promote uniformity with national safety standards. The regulations shall establish penalties for category 1 and category 2 safety violations which shall be proportional with the severity of such violations as determined by the commissioner. The bus operator shall be responsible for all penalties.

b. The schedule of bus safety out-of-service violations shall establish and specify those violations which the commissioner determines to be category 1 violations, and shall further establish and specify the monetary civil penalty for category 1 violations. The monetary civil penalties established and specified by the commissioner in the schedule shall be proportional to the nature, severity and repetition of the violation. The minimum monetary civil penalty for a category 1 violation shall be $300 and the maximum monetary civil penalty for a category 1 violation shall be $5,000.

c. The schedule of bus safety out-of-service violations shall establish and specify those violations which the commissioner determines to be category 2 violations, and shall further establish and specify the monetary civil penalty for category 2 violations. The monetary civil penalties established and specified by the commissioner in the schedule shall be proportional to the nature, severity and repetition of the violation. The maximum monetary civil penalty for a category 2 violation shall be $500.

C.48:4-2.1g Evidence of appropriate insurance; holding, impoundment of vehicle.

5. In addition to any other penalties provided by law, when a bus is operated on public highways or in public places in this State, without satisfactory evidence of appropriate insurance as required by statute or regulation, that vehicle may be immediately placed out-of-service and held or impounded by law enforcement authorities or the department. The vehicle may be held or impounded until evidence of appropriate insurance for that vehicle is on file with the department or the bus owner or operator otherwise meets applicable statutes or regulations governing same.

C.48:4-2.1h Bus safety out-of-service violation; holding, impoundment of vehicle.

6. In addition to any other penalties provided by law, when a bus is operated on public highways or in public places in this State, with a bus safety out-of-service violation, whether in interstate or intrastate commerce, whether registered or not in this or any other jurisdiction, that vehicle may be immediately placed out-of-service and held or impounded by law enforcement authorities or the department. The vehicle may be held or impounded until appropriate repairs are made on-site or until towed by the owner or operator to an appropriate repair facility, maintenance garage or otherwise, so that repairs of all bus safety out-of-service violations can be made. The vehicle shall not be operated in this State until the defects are remediated and such remedial action is either certified or approved by the department.

C.48:4-2.1i Inspection; penalty.

7. a. The commissioner or any duly authorized representative of the commissioner is authorized to direct any bus operated in this State to immediately proceed to a designated facility for inspection. If a driver fails to immediately report as directed to the designated facility, the operator shall be subject to a penalty of $1,000.

b. At the time of inspection, the commissioner or any duly authorized representative of the commissioner is authorized to demand and examine the driver's operating credentials.

C.48:4-2.1j Vehicle inspection report.

8. a. The bus driver shall have in his possession a copy of the most recent vehicle inspection report for the bus he is driving. If defects or deficiencies are noted on the report, the driver shall have signed the report to acknowledge that the driver has reviewed it and that there is a certification that the required repairs have been made. A driver failing to produce the most recent vehicle inspection report shall be subject to a maximum monetary civil penalty of $100.

b. An operator shall annually provide a notice to each driver employed by the operator containing a copy of the provisions of subsection a. of this section.

c. No operator shall compel, coerce or otherwise cause a driver to include false information on a vehicle inspection report. An operator violating the provisions of this subsection shall be subject to a maximum monetary civil penalty of $5,000.

C.48:4-2.1k Penalty enforcement; summons issued for violation of act.

9. Any penalty imposed pursuant to this act may be collected, with costs, in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court or Municipal Court of the county or municipality, respectively, wherein the violation occurs, or wherein the operator resides or has a place of business or principal office in this State, shall have jurisdiction to enforce the provisions of "the penalty enforcement law," in connection with this act. The Commissioner of Transportation or any duly authorized representative of the commissioner may issue a summons and complaint returnable in a municipal court or other court of competent jurisdiction for a violation of this act and any rule or regulation adopted pursuant thereto, except that when conducting an inspection at the site of an owner or operator's business, the commissioner or the commissioner's representative shall not issue a summons and complaint for a vio-

lation of this act, but shall take any other enforcement action authorized by law for that violation. Municipal, county, and State prosecutors are authorized to assist the commissioner in the enforcement of this act. The commissioner may institute an action in the Superior Court for injunctive relief to prevent or restrain any violation of this act, or any order issued, or rule of regulation adopted, pursuant to this act.

C.48:4-2.1l Enforcement of provisions of act.

10. All county, municipal and other officers charged with the enforcement of State and municipal laws, are authorized to assist the department under the direction of the commissioner or any duly authorized representative of the commissioner in the enforcement of the provisions of this act, any rules or regulations adopted pursuant thereto, and any administrative or judicial orders issued pursuant thereto.

C.48:4-2.1m Agreements with governmental agencies.

11. The commissioner is authorized to consult with and enter into agreements with federal, interstate, bi-state, and intrastate agencies and authorities as may be necessary to provide for the efficient and uniform implementation of this act.

C.48:4-2.1n Penalty money deposited into General Fund.

12. Monies received from penalties collected pursuant to this act shall be deposited in the General Fund.

C.48:4-2.1o Act in addition to other law.

13. The implementation and enforcement of this act shall not be deemed as supplanting any other provisions of this Title and shall not preclude enforcement of other provisions of this Title.

14. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 226

AN ACT concerning the payment of special assessments and amending R.S.40:56-35.

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

1. R.S.40:56-35 is amended to read as follows:

Assessments, payment in installments; delinquent installments.

40:56-35. The governing body may by resolution provide that the owner of any real estate upon which any assessments for any improvement shall have been made may pay such assessments in such equal yearly installments, not exceeding ten, except as hereinafter provided, with legal interest thereon, and at such time in each year as the governing body shall determine, but any person assessed may pay the whole of any assessment, or any balance of installments, with accrued interest thereon, at one time. If any such installment shall remain unpaid for 30 days after the time when the same shall have become due, either:

a. the whole assessment or balance due thereon shall become and be immediately due, shall draw interest at the rate imposed upon the arrearage of taxes in such municipality and be collected in the same manner as is provided by this subtitle for other past due assessments; or

b. the governing body may, by resolution, permit any person who is delinquent in the payment of such an installment to pay only the amount of the delinquent payment and any interest on the delinquent payment that has accrued from the date that the installment was due and payable until the date that payment of the delinquent installment is made. After the delinquent installment is satisfied, the person assessed shall be reinstated on a regular installment payment schedule.

Whenever any owner shall be given the privilege of paying any assessment in installments such assessment shall remain a lien upon the land described therein until the same with all installments and accrued interest thereon shall be paid, and no proceedings to collect or enforce the same need be taken until default shall be made in the payment of any installment as hereinbefore in this subtitle provided.

In any municipality which is constructing a local improvement with funds secured from the Federal Government, through the public works administration, under the terms of the national recovery act, the governing body may provide that the assessments may be payable in yearly installments, with legal interest thereon, over a period of years up to but in no event exceeding the

term of years for which the funds therefor are borrowed from the Federal Government, and at such time in each year as the governing body shall determine. The governing body may fix the yearly installments in such amounts as in its opinion are equitable and just.

In any municipality in which the local improvement is being financed by the sale of bonds, the governing body may provide that the assessments may be payable in 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 20 years, whichever shall be less, and at such time in each year as the governing body shall determine. The governing body may fix the yearly installments in such amounts as in its opinion are equitable and just.

2. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 227

AN ACT concerning the New Jersey Economic Development Authority and amending P.L.1974, c.80.

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

1. 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 Commerce and Economic Development 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 this act shall be deemed and held to be an essential governmental function of the State.

b. The authority shall consist of the Commissioner of Banking, the Commissioner of Commerce and Economic Development, the Commissioner of Labor, and the State Treasurer, who shall be members ex officio, and six public members appointed by the Governor with the advice and consent of the Senate, of which one public

member (who shall not be a legislator) shall be appointed by the Governor upon recommendation of the Senate President and one public member (who shall not be a legislator) shall be appointed by the Governor upon recommendation of the Speaker of the General Assembly, all for terms of three years. The first two public member positions on the authority that are or become vacant on or after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of the Governor upon the recommendation of the Senate President and the Speaker of the General Assembly, 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. 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 with the advice and consent of the Senate, 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, all for terms of three years. The first two alternate member positions on the authority that are or become vacant on or after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of the Governor upon the recommendation of the Senate President and the Speaker of the General Assembly, respectively. 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 his appointment and until his 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.

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 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 Commissioner of Commerce and Economic Development may, at his discretion, serve as the chairperson of the authority or may appoint one of the six public members of the authority as chairperson. Any such designation or appointment shall be made in writing and shall be delivered to the authority and to the Governor and shall continue in effect until revoked or amended by a writing delivered to the authority and the Governor. 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 six 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 six 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 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 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 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 his 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 in any contract, sale, purchase, lease or transfer of real or personal property to which the authority is a party.

2. This act shall take effect immediately.

Approved August 15, 1995.

CHAPTER 228

AN ACT appropriating $2,644,331 from the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, for the purpose of providing grants to local government units for financing the cost of the planning of combined sewer overflow abatement projects.

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

1. a. There is appropriated from the "Stormwater Management and Combined Sewer Overflow Abatement Fund," created pursuant to section 14 of the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, to the Department of Environmental Protection the sum of $2,644,331 for the purpose of providing grants to local government units for financing the cost of the planning of combined sewer overflow abatement projects, as follows:

LOCAL GOVERNMENT UNIT	COUNTY	GRANT AWARD
Fort Lee Boro	Bergen	$112,050
Ridgefield Park Village	Bergen	375,278
Camden City	Camden	990,000
Harrison Town	Hudson	219,280
Perth Amboy City	Middlesex	323,460
Paterson City	Passaic	489,396
Rahway City	Union	134,867

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. The Department of Environmental Protection may apply the provisions of the "Sewage Infrastructure Improvement Act," P.L.1988, c.90 (C.58:25-23 et seq.), and any rules or regulations adopted pursuant thereto, as appropriate, in awarding the grants authorized pursuant to section 1 of this act.

3. Subject to the approval of the Joint Budget Oversight Committee or its successor, the Commissioner of Environmental Protection may reduce the amount of any grant awarded pursuant to section 1 of this act based upon final allowable project cost determined in accordance with rules and regulations adopted pursuant to the "Sewage Infrastructure Improvement Act," P.L.1988, c.90 (C.58:25-23 et seq.).

4. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1989, c.181.

5. This act shall take effect immediately.

Approved August 16, 1995.

CHAPTER 229

AN ACT concerning Medicare supplement insurance coverage and supplementing P.L.1982, c.94 (C.17B:26A-1 et seq.).

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

C.17B:26A-12 Findings, declarations on Medicare supplement insurance.

1. The Legislature finds and declares that:

a. As of April 1, 1995, individuals in the State of New Jersey under age 65 who became eligible for Medicare benefits due to a disability or because they suffer from the end stage of renal disease do not have access to Medicare supplement insurance, otherwise known as "Medigap" insurance.

b. Prior to that date only one health insurance carrier in New Jersey offered Medicare supplement insurance contracts to the under 65 population. Unsustainable losses, caused in part by the fact that this carrier was the only carrier providing such coverage, led to the carrier's withdrawal from the Medicare supplement insurance market for the under 65 population on March 31, 1995.

c. Because Medicare supplement insurance pays for many of the health care expenses not covered by Medicare, the absence of Medicare supplement insurance will eventually leave thousands of blind, AIDS, disabled and dialysis patients in New Jersey without any means of secondary insurance to supplement their Medicare coverage. For many of these people with serious illnesses, the 20 percent co-payments and deductibles charged by Medicare will cause financial hardship and emotional distress. If no action is taken, Medicare recipients under 65 years old will be forced to deplete their personal assets and may eventually be forced to resort to Medicaid to supplement their health care needs.

d. Therefore, the Legislature declares that it is in the public interest:

(1) to ensure that Medicare supplement insurance is available to the individuals under 65 years of age who become eligible for Medicare benefits;

(2) to require all health insurance carriers who currently sell Medicare supplement insurance to the over age 65 population to also offer, at a minimum, Medicare Supplement Plan C coverage to the under age 65 population;

(3) to establish a mechanism that will: allow the premiums on those Medicare supplement insurance policies and contracts to remain affordable; encourage insurance carriers to continue to serve or enter this market; and provide for the equitable sharing of any losses;

(4) to ensure that premiums for the more than 200,000 New Jersey residents who have purchased Medicare supplement insurance remain affordable and do not become subject to excessive rate increases; and

(5) that regulations necessary to effectuate the purposes of this act be promulgated by the Commissioner of Insurance expeditiously due to the urgency of the situation.

C.17B:26A-13 Medicare Supplement Plan C offered.

2. a. No later than 60 days after the effective date of this act, every carrier issuing or renewing Medicare supplement insurance policies or contracts shall, as a condition of issuing or renewing

health benefits plans in this State, offer, at a minimum, Medicare Supplement Plan C policies or contracts to persons in this State 50 years of age or older who are entitled to Medicare benefits due to disability, except as otherwise provided in subsection d. of this section.

b. No carrier shall deny or condition the issuance or renewal of a Medicare supplement insurance policy or contract available for sale in this State pursuant to subsection a. of this section nor discriminate in the pricing of such policy or contract because of the health status, claims experience, receipt of health care or medical condition of an applicant if an application for the policy or contract is submitted during the six-month period beginning with the first month in which an individual is enrolled for benefits under Medicare Part B or if the application for the policy or contract is submitted within six months after the effective date of this act.

c. Subsections a. and b. of this section shall not be construed as preventing the exclusion of benefits under a policy or contract during the first three months, based on a preexisting condition for which the insured received treatment or was otherwise diagnosed during the six months before the policy or contract became effective, except that the limitation shall not apply to an individual who has, under a prior health benefits policy or contract, with no intervening lapse in coverage, been treated or diagnosed by a physician for a condition under that policy or contract or satisfied a three-month preexisting condition limitation.

d. (1) Notwithstanding the provisions of subsection a. of this section to the contrary, a carrier that does not currently issue or renew individual Medicare supplement insurance policies or contracts and does issue and renew Medicare supplement insurance policies or contracts for groups whose membership in the group is not based on health status, claims experience, receipt of health care or medical condition, shall not be required to provide coverage to persons eligible for Medicare supplement insurance coverage pursuant to subsection a. of this section, other than to members of the group.

(2) No group to which the provisions of paragraph (1) of this subsection apply shall institute an age requirement for participation in the group after June 1, 1995.

e. (1) Rates for Medicare supplement insurance policies or contracts issued pursuant to this section shall be no greater than the lowest rate charged by a carrier for the same type of policies or contracts issued to persons 65 years of age and over and shall be formulated in accordance with the provisions of section 6 of P.L.1982, c.95 (C.17:35C-6)

or section 6 of P.L.1982, c.94 (C.17B:26A-6), as appropriate, and any rules or regulations promulgated thereto.

(2) Following the close of each carrier's accounting year, if the commissioner determines that a carrier's loss ratio for policies or contracts issued pursuant to section 2 or 3 of this act was less than 75% for group policies or contracts or less than 65% for individual policies or contracts for that calendar year, the carrier shall be required to refund to the holders of any policy or contract the difference between the amount of net earned premium it received that year and the amount that would have been necessary to achieve the 75% or 65% loss ratio, as appropriate.

C.17B:26A-14 Rules, regulations; rates; plan provision.

3. a. The commissioner shall adopt rules and regulations establishing a plan to provide Medicare Supplement Plan C coverage of the standardized Medicare supplement plans to persons under 50 years of age in this State who are entitled to Medicare benefits due to disability no later than 120 days after the effective date of this act.

b. The plan shall not deny or condition the issuance or renewal of a Medicare supplement insurance policy or contract available for sale in this State pursuant to subsection a. of this section nor discriminate in the pricing of such policy or contract because of the health status, claims experience, receipt of health care or medical condition of an applicant if an application for the policy or contract is submitted during the six-month period beginning with the first month in which an individual is enrolled for benefits under Medicare Part B or if the application for the policy or contract is submitted within six months after the effective date of this act.

c. Subsections a. and b. of this section shall not be construed as preventing the exclusion of benefits under a policy or contract during the first three months, based on a preexisting condition for which the insured received treatment or was otherwise diagnosed during the six months before the policy or contract became effective.

d. The plan shall provide for the appointment of a contracting carrier to provide the coverage specified in subsection a. of this section. The carrier shall have experience in providing and servicing standardized Medicare supplement insurance policies or contracts to persons in this State.

e. The rates for the plan established pursuant to subsection a. of this section shall be no greater than the lowest rate charged by the contracting carrier for Medicare Supplement Plan C policies

or contracts issued by the contracting carrier to persons pursuant to subsection a. of section 2 of this act.

f. The plan shall provide for the appointment of a governing board which shall be responsible for implementing the provisions of this act consistent with the rules and regulations adopted pursuant to subsection a. of this section. The governing board shall include representatives from, among others, the carriers and health maintenance organizations subject to the provisions of section 4 of this act.

C.17B:26A-15 Procedures for equitable sharing of losses; conditions; filing statement.

4. The plan shall establish procedures for the equitable sharing of any losses incurred by the contracting carrier providing coverage under the plan pursuant to subsection a. of section 3 of this act as follows:

a. By March 1, 1996 and following the close of each calendar year thereafter, on a date established by the commissioner:

(1) (a) every carrier and health maintenance organization issuing health benefits plans or health maintenance organization subscriber contracts in this State shall file with the commissioner its net earned premium in the preceding calendar year ending December 31; and

(b) the contracting carrier issuing Medicare supplement insurance policies or contracts under the plan established pursuant to subsection a. of section 3 of this act shall file with the commissioner its net earned premium on those policies or contracts and the claims paid and the administrative expenses attributable to those policies or contracts in the preceding calendar year ending December 31; and

(2) No later than March 1, 1996 and following the close of each calendar year thereafter, on a date established by the commissioner, a contracting carrier issuing Medicare supplement insurance policies or contracts pursuant to subsection a. of section 3 of this act shall file with the commissioner a statement of any net loss on those policies or contracts in the calendar year ending December 31, along with any supporting information required by the commissioner. For purposes of this subsection, a loss shall occur if the claims paid and reasonable administrative expenses for Medicare supplement insurance policies or contracts issued to individuals under 50 years of age pursuant to subsection a. of section 3 of this act exceed the net earned premium and any investment income thereon.

b. (1) Every carrier and health maintenance organization authorized to provide health benefits plans or health maintenance organization subscriber contracts in this State shall be liable for an assessment to reimburse the contracting carrier issuing Medi-

care supplement insurance contracts or policies pursuant to subsection a. of section 3 of this act for any net loss incurred by the contracting carrier in the previous year, unless the carrier or health maintenance organization has received an exemption from the commissioner pursuant to paragraph (3) of this subsection.

(2) The assessment of each carrier and health maintenance organization shall be in the proportion that the net earned premium of the carrier or health maintenance organization for all health benefits plans or health maintenance organization subscriber contracts issued or renewed in the calendar year preceding the assessment bears to the net earned premium of all carriers and health maintenance organizations for all health benefits plans or health maintenance organization subscriber contracts issued or renewed in the calendar year preceding the assessment and shall be carried out in a form and manner to be determined by the commissioner.

(3) A carrier or health maintenance organization that is financially impaired may seek from the commissioner an exemption or a deferment in whole or in part from any assessment issued by the commissioner. The commissioner may exempt a carrier or health maintenance organization from an assessment or defer, in whole or in part, the assessment of a carrier or health maintenance organization if, in the opinion of the commissioner, the payment of the assessment would endanger the ability of the carrier or health maintenance organization to fulfill its contractual obligations. If an assessment against a carrier or health maintenance organization is deferred in whole or in part or if the carrier or health maintenance organization is exempt from the assessment, the amount by which the assessment is deferred or the amount that a carrier or health maintenance organization is exempted from paying may be assessed against the other carriers and health maintenance organizations in a manner consistent with the basis for assessment set forth in this section.

c. Payment of an assessment made under this section shall be a condition of issuing health benefits plans and health maintenance organization subscriber contracts in the State for a carrier or health maintenance organization. Failure to pay the assessment shall be grounds for forfeiture of a carrier's or health maintenance organization's authorization to issue health benefits plans and health maintenance organization subscriber contracts in the State, as well as any other penalties permitted by law.

d. Notwithstanding the provisions of this section to the contrary, no carrier or health maintenance organization shall be liable

for an assessment to reimburse the contracting carrier pursuant to this section in an amount which exceeds 35% of the net loss of the contracting carrier. To the extent that this limitation results in any unreimbursed loss to the contracting carrier, the unreimbursed loss shall be distributed among all carriers and health maintenance organizations: (1) which owe assessments pursuant to subsection a. of this section; (2) whose assessments do not exceed 35% of the net loss of the contracting carrier; and (3) who have not received an exemption pursuant to paragraph (3) of subsection b. of this section.

C.17B:26A-16 Audit required, conditions.

5. a. Whenever the contracting carrier reports a net loss to the commissioner pursuant to paragraph (2) of subsection a. of section 4 of this act, the related operations of the contracting carrier and any losses incurred by the contracting carrier regarding Medicare supplement insurance policies or contracts issued pursuant to subsection a. of section 3 of this act shall be subject to an audit conducted by a qualified independent certified public accountant prior to the imposition of any assessment pursuant to subsection b. of section 4 of this act.

b. The auditor shall be selected and approved by the governing board of the plan through a competitive bidding process of certified public accountants qualified in New Jersey to perform such audits. The audit shall include:

(1) a review of the handling and accounting of assets and monies of the contracting carrier;

(2) a determination that administrative expenses have been properly allocated and are reasonable;

(3) a review of the internal financial controls of the contracting carrier;

(4) a review of the annual financial report of the contracting carrier; and

(5) a review of the calculation by the commissioner of any assessments for net losses.

c. A copy of the audit and related management letters shall be delivered to the governing board of the plan, to the commissioner and to each carrier and health maintenance organization to which the provisions of this act apply. The audit report shall be reviewed by the governing board of the plan. Upon recommendation of the governing board, the contracting carrier shall implement any recommendations made by the auditor.

C.17B:26A-17 Definitions.

6. As used in this act:

"Carrier" means an insurance company or service corporation authorized to issue health benefits plans in this State.

"Financially impaired" means a carrier or health maintenance organization 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 or health maintenance organization which is under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Health benefits plan" means a hospital and medical expense insurance policy; hospital service corporation contract, medical service corporation contract or health service corporation contract delivered or issued for delivery in this State.

7. This act shall take effect immediately.

Approved August 16, 1995.

CHAPTER 230

AN ACT concerning the location of sexually oriented businesses and amending N.J.S.2C:34-2 and supplementing chapter 34 of Title 2C of the New Jersey Statutes.

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

1. N.J.S.2C:34-2 is amended to read as follows:

Obscenity for persons 18 years of age or older.

2C:34-2. Obscenity for Persons 18 Years of Age or Older. a. Definitions for purpose of this section:

(1) "Obscene material" means any description, narrative account, display, or depiction of sexual activity or anatomical area contained in, or consisting of, a picture or other representation, publication, sound recording, live performance, or film, which by means of posing, composition, format or animated sensual details:

(a) Depicts or describes in a patently offensive way, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, or lewd exhibition of the genitals,

(b) Lacks serious literary, artistic, political, or scientific value, when taken as a whole, and

(c) Is a part of a work, which to the average person applying contemporary community standards, has a dominant theme taken as a whole, which appeals to the prurient interest.

(2) "Exhibit" means the sale of admission to view obscene material.

b. A person who sells, distributes, rents or exhibits obscene material to a person 18 years of age or older commits a crime of the fourth degree. Sale of obscene material shall be deemed to include any form of transaction which results in the admission to a display or depiction of obscene material or temporary or permanent access to any obscene material.

Nothing contained herein or in section 3 of P.L.1995, c.230 (C.2C:34-7) shall be construed to prohibit a municipality from adopting as a part of its zoning ordinances an ordinance permitting the sale, distribution, rental or exhibition of obscene material in which event such sale, distribution, rental or exhibition shall be deemed legal.

C.2C:34-6 Definitions.

2. As used in sections 2 and 3 of this act:

a. "Sexually oriented business" means:

(1) A commercial establishment which as one of its principal business purposes offers for sale, rental, or display any of the following:

Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, slides or other visual representations which depict or describe a "specified sexual activity" or "specified anatomical area"; or still or motion picture machines, projectors or other image-producing devices which show images to one person per machine at any one time, and where the images so displayed are characterized by the depiction of a "specified sexual activity" or "specified anatomical area"; or instruments, devices, or paraphernalia which are designed for use in connection with a "specified sexual activity"; or

(2) A commercial establishment which regularly features live performances characterized by the exposure of a "specified anatomical area" or by a "specified sexual activity," or which regularly shows films, motion pictures, video cassettes, slides, or other photographic representations which depict or describe a "specified sexual activity" or "specified anatomical area."

b. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

c. "Specified anatomical area" means:

(1) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if covered.

d. "Specified sexual activity" means:

(1) The fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast; or

(2) Any actual or simulated act of human masturbation, sexual intercourse or deviate sexual intercourse.

C.2C:34-7 Sexually oriented business; location, building requirements; penalty.

3. a. Except as provided in a municipal zoning ordinance adopted pursuant to N.J.S.2C:34-2, no person shall operate a sexually oriented business within 1,000 feet of any existing sexually oriented business, or any church, synagogue, temple or other place of public worship, or any elementary or secondary school or any school bus stop, or any municipal or county playground or place of public resort and recreation, or within 1,000 feet of any area zoned for residential use. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this act where another sexually oriented business, an elementary or secondary school or school bus stop, or any municipal or county playground or place of public resort and recreation is subsequently established within 1,000 feet, or a residential district or residential lot is subsequently established within 1,000 feet.

b. Every sexually oriented business shall be surrounded by a perimeter buffer of at least 50 feet in width with plantings, fence, or other physical divider along the outside of the perimeter sufficient to impede the view of the interior of the premises in which the business is located. The municipality may, by ordinance, require the perimeter buffer to meet additional requirements or standards. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this act.

c. No sexually oriented business shall display more than two exterior signs, consisting of one identification sign and one sign giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size.

d. A person who violates this section is guilty of a crime of the fourth degree.

4. This act shall take effect on the 30th day after enactment.

Approved August 16, 1995.

CHAPTER 231

AN ACT concerning the provision of affordable housing and supplementing P.L.1985, c.222 (C.52:27D-301 et seq.).

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

C.52:27D-310.1 Computing municipal adjustment, exclusion of park land.

1. When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the Council on Affordable Housing shall exclude from designating as vacant land any land listed on a master plan of a municipality as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space and which is owned by a county, municipality or tax-exempt, nonprofit organization.

C.52:27D-310.2 Reservation of park land.

2. Notwithstanding any law or regulation to the contrary, nothing shall preclude a municipality which has reserved less than three percent of its land area for conservation, park lands or open space under the standards set forth in section 1 of this act from reserving up to three percent of its land area for those purposes. Nothing herein is intended to alter the responsibilities of municipalities with respect to plans already approved which were based upon the right to a vacant land adjustment.

3. This act shall take effect immediately.

Approved August 16, 1995.

CHAPTER 232

AN ACT concerning the pinelands and supplementing P.L.1979, c.111 (C.13:18A-1 et seq.).

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

C.13:18A-50 Funds for land acquisition; "limited practical use" defined.

1. a. The Commissioner of Environmental Protection, utilizing any monies that may be made available from any source for the

purpose, may acquire on behalf of the State from willing sellers any land or interest therein that qualifies for acquisition pursuant to the limited practical use program for the pinelands area as set forth in section 502(k)(2)(C) of the "National Parks and Recreation Act of 1978," Pub.L.95-625 (16 U.S.C.§471i(k)(2)(C)), and pay any necessary costs associated with those acquisitions. The commissioner may not expend more than $100,000 on any single acquisition pursuant to this subsection without the approval of the Joint Budget Oversight Committee or its successor.

For the purposes of this act, "limited practical use" means the designation given to any land or interest therein that has limited practical use because it is located in the pinelands area and is held by a landowner who both owns less than 50 acres in the pinelands area and has exhausted existing remedies to secure relief, or has such meaning as may be otherwise provided by federal law.

b. Notwithstanding any law, rule, or regulation to the contrary, if the commissioner determines that the costs for surveys, appraisals, or other technical or administrative processes, procedures, or matters associated with the proposed acquisition of any land or interest therein pursuant to subsection a. of this section are disproportionate to the estimated cost of the land or interest therein to be acquired, the commissioner may waive the surveys, appraisals, or other technical or administrative processes, procedures, or matters to the extent necessary to ensure that the transaction shall be cost effective; provided, however, that the current owner of record has marketable title to the land or interest therein at issue, as verified by a 60-year search.

C.13:18A-51 Sale of land.

2. a. If the commissioner determines that any land or interest therein acquired pursuant to subsection a. of section 1 of this act is not useful to be retained by the State, or any agency, authority, or entity thereof, for recreation and conservation purposes as defined pursuant to section 3 of P.L.1992, c.88, or for farmland preservation, historic preservation, water supply protection, or other public purposes, the commissioner may sell, exchange, or otherwise convey or transfer that land or interest therein to: (1) any public entity, including the federal government or a local government unit, or any agency, authority, or entity thereof, or any private nonprofit organization that agrees to retain and maintain the land for public purposes, at no cost or at such cost as may be established by the commissioner; or (2) any private party as set forth in subsection b. of this section.

b. If the commissioner determines that any land or interest therein acquired pursuant to subsection a. of section 1 of this act should be sold, exchanged, or otherwise conveyed or transferred to a private party, the commissioner may offer the land or interest therein first for private sale to any owner of land contiguous thereto acting either individually or jointly with another such owner, at a price to be established by the commissioner. The minimum price for which the land or interest therein may be offered for private sale shall be the same as the cost of acquisition of that land or interest therein by the commissioner pursuant to subsection a. of section 1 of this act, or, if the private sale involves an exchange, a value equivalent to the cost of acquisition; except that, if the land or interest therein offered for private sale includes a deed restriction imposed by the commissioner, the minimum price shall be the same as the cost of acquisition less the value of that deed restriction. If more than one such owner of contiguous land indicates interest in obtaining the land or interest therein at issue at the established price, it shall be sold, exchanged, or otherwise conveyed or transferred to the highest bidder from among all such landowners. If no owner of contiguous land indicates interest in obtaining the land or interest therein at issue, it may be offered for public sale at auction to the highest bidder.

c. Notwithstanding the provisions of any other law, rule, or regulation to the contrary, no sale, exchange, conveyance, or transfer of any land or interest therein as authorized pursuant to this section shall be subject to the approval of the State House Commission or the requirements of P.L.1993, c.38 (C.13:1D-51 et al.).

C.13:18A-52 Use of monetary proceeds.

3. a. Any monetary proceeds realized from the sale, exchange, conveyance, or transfer of any land or interest therein pursuant to section 2 of this act may be used by the commissioner to acquire additional lands or interests therein deemed to be of limited practical use as authorized pursuant to subsection a. of section 1 of this act.

b. Any monetary proceeds realized from the sale, exchange, conveyance, or transfer of any land or interest therein pursuant to section 2 of this act and not expended as authorized pursuant to subsection a. of this section shall be deposited into the applicable fund from which the State share of the monies used to acquire the land or interest therein pursuant to subsection a. of section 1 of this act was drawn.

C.13:18A-53 Actions, conformity with law.

4. No action may be taken pursuant to this act unless it is consistent with section 502 of the "National Parks and Recreation Act of 1978" and conforms with, and furthers the purposes of, the comprehensive management plan for the pinelands area adopted pursuant to section 7 of P.L.1979, c.111 (C.13:18A-8).

C.13:18A-54 Rules, regulations.

5. The commissioner, in consultation with the Pinelands Commission, may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement this act.

6. This act shall take effect immediately.

Approved August 16, 1995.

CHAPTER 233

AN ACT providing certain protections to consumers who purchase or lease motorized wheelchairs.

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

C.56:12-75 Definitions relative to motorized wheelchairs.

1. As used in this act:

"Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility.

"Consumer" means any of the following:

(1) The purchaser of a motorized wheelchair, if the motorized wheelchair was purchased from a motorized wheelchair dealer or manufacturer for purposes other than resale.

(2) A person to whom the motorized wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motorized wheelchair.

(3) A person who may enforce the warranty.

(4) A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

"Demonstrator" means a motorized wheelchair used primarily for the purpose of demonstration to the public.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Early termination cost" means any expense or obligation that a motorized wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer pursuant to section 4 of this act. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

"Early termination savings" means any expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer pursuant to section 4 of this act. "Early termination savings" includes an interest charge that the motorized wheelchair lessor would have paid to finance the purchase of the motorized wheelchair or, if the motorized wheelchair lessor does not finance the purchase of the motorized wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

"Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motorized wheelchairs, but does not include a motorized wheelchair dealer.

"Motorized wheelchair" means any motor-driven wheelchair, including a demonstrator, and all accompanying power accessories utilized to operate the wheelchair, that a consumer purchases or accepts transfer of in this State for the purpose of increasing independent mobility, in the activities of daily living, of an individual who has limited or no ambulation abilities, and includes motorized power scooters designed primarily for indoor use and retrofit power units designed to motorize power wheelchairs.

"Motorized wheelchair dealer" or "dealer" means a person who is in the business of selling motorized wheelchairs.

"Motorized wheelchair lessor" or "lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

"Nonconformity" means a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair, and

that is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the motorized wheelchair by a consumer.

"Reasonable attempt to repair" means, within the term of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner, that:

(1) A nonconformity within the warranty has been subject to repair by the manufacturer, lessor or any of the manufacturer's authorized dealers at least three times and the nonconformity continues; or

(2) The motorized wheelchair is out of service for an aggregate of at least 20 days due to a nonconformity, after having been returned to the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized dealers for repair.

C.56:12-76 Manufacturer warranty.

2. A manufacturer who sells a motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of a motorized wheelchair that, for a period of one year from the date of the first delivery to the consumer, the motorized wheelchair will be free from any condition or defect which substantially impairs the value of the wheelchair to the consumer.

C.56:12-77 Repair of nonconformity.

3. If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers and makes the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to a consumer, the nonconformity shall be repaired at no charge to the consumer by the manufacturer.

C.56:12-78 Manufacturer's responsibility if nonconformity is irreparable.

4. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall:

a. At the direction of a consumer, other than a consumer who leases a motorized wheelchair from a motorized wheelchair dealer, do either of the following:

(1) Accept return of the motorized wheelchair and replace the motorized wheelchair with a comparable new motorized wheelchair and refund any collateral costs; or

(2) Accept return of the motorized wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

b. With respect only to a consumer who has leased a motorized wheelchair from a wheelchair lessor, accept return of the motorized wheelchair, refund to the motorized wheelchair lessor and to any holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

c. As used in this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date, if the lease sets forth that value, less the motorized wheelchair lessor's early termination savings.

d. Pursuant to this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor or motorized wheelchair dealer.

C.56:12-79 Transfer of possession of motorized wheelchair.

5. In order to receive a comparable new motorized wheelchair or a refund pursuant to subsection a. of section 4 of this act, a consumer shall offer to transfer possession of the motorized wheelchair having the nonconformity to the manufacturer of that wheelchair. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new

motorized wheelchair or refund. When the manufacturer provides the new motorized wheelchair or refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

C.56:12-80 Obtaining a refund.

6. In order to receive a refund pursuant to subsection b. of section 4 of this act, a consumer shall:

a. Offer to return the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the motorized wheelchair having the nonconformity; and

b. Offer to transfer possession of the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

C.56:12-81 Lease not enforced after refund.

7. The lease of a motorized wheelchair shall not be enforced against a consumer after the consumer receives a refund for the leased motorized wheelchair pursuant to subsection b. of section 4 of this act.

C.56:12-82 Disclosure of reasons for return.

8. No motorized wheelchair returned by a consumer or motorized wheelchair lessor in this State pursuant to section 4 of this act, or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, shall be sold or leased again in this State unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

C.56:12-83 Dispute resolution; application, hearing, procedure.

9. a. After a reasonable attempt to repair, a consumer shall have the option of submitting any dispute arising under section 4 of this act to the director for resolution. The director may establish a filing fee, to be paid by the consumer, fixed at a level not to exceed the cost for the proper administration and enforcement of this act. Upon application by the consumer and payment of any filing fee, the manufacturer shall submit to the hearing procedure established in this section.

b. The director shall review a consumer's application for dispute resolution and accept eligible disputes for referral to the Office of Administrative Law for a summary hearing to be conducted in accordance with special rules adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), by the Office of Administrative Law in consultation with the director. Immediately upon acceptance of a consumer's application for dispute resolution, the director shall contact the parties and arrange for a hearing date with the Office of Administrative Law. The hearing date shall, to the greatest extent possible, be convenient to all parties, but shall be no later than 20 days from the date the consumer's application is accepted, unless a later date is agreed upon by the consumer. The Office of Administrative Law shall render a decision, in writing, to the director within 20 days of the conclusion of the summary hearing. The decision shall provide a brief summary of the findings of fact, appropriate remedies pursuant to this act, and a specific date for completion of all awarded remedies. The director, upon a review of the proposed decision submitted by the administrative law judge, shall adopt, reject, or modify the decision no later than 15 days after receipt of the decision. Unless the director modifies or rejects the decision within the 15-day period, the decision of the administrative law judge shall be deemed adopted as the final decision of the director. If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of $5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

c. The Office of Administrative Law is authorized to issue subpoenas to compel the attendance of witnesses and the production of documents, papers and records relevant to the dispute.

d. A manufacturer or consumer may appeal a final decision to the Appellate Division of the Superior Court. An appeal by a manufacturer shall not be heard unless the petition for the appeal is accompanied by a bond in a principal sum equal to the money award made by the administrative law judge plus $2,500 for anticipated attorney's fees and other costs, secured by cash or its equivalent, payable to the consumer. The liability of the surety of any bond filed pursuant to this section shall be limited to the indemnification of the consumer in the action. The bond shall not limit or impair any right of recovery otherwise available pursuant to law, nor shall the amount of the bond be relevant in determining the amount of recovery to which the consumer shall be entitled.

If a final decision resulting in a refund to the consumer is upheld by the court, recovery by the consumer shall include attorney's fees and costs of suit, and reimbursement for actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair and limited to the period of time after which the consumer's motorized wheelchair was offered to the manufacturer for return under this act, except in those cases in which the manufacturer made a comparable motorized wheelchair available to the consumer free of charge during that period. If the court finds that the manufacturer had no reasonable basis for its appeal or that the appeal was frivolous, the court shall award treble damages to the consumer. Failure of the Office of Administrative Law to render a written decision within 20 days of the conclusion of the summary hearing as required by subsection b. of this section shall not be a basis for appeal.

e. The Attorney General shall monitor the implementation and effectiveness of this act and report to the Legislature after three years of operation, at which time a recommendation shall be made either to continue under the procedures set forth in this act or to make such modifications as may be necessary to effectuate the purposes of this act.

C.56:12-84 Consumer's rights not limited; waivers, void, unenforceable.

10. a. This act shall not limit rights or remedies available to a consumer under any other law.

b. Any waiver by a consumer of rights under this act shall be void and unenforceable.

C.56:12-85 Consumer's recovery for damages.

11. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this act. The court shall award to a consumer who prevails in an action brought pursuant to this section twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

C.56:12-86 Rules, regulations.

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

13. This act shall take effect on the 180th day after enactment except that section 12 shall take effect immediately.

Approved August 21, 1995.

CHAPTER 234

AN ACT modifying certain unemployment insurance benefit eligibility requirements and amending R.S.43:21-4, R.S.43:21-14 and R.S.43:21-19.

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

1. R.S.43:21-4 is amended to read as follows:

Benefit eligibility conditions.

43:21-4. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if:

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office, as directed by the division in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided that no such regulation shall conflict with subsection (a) of R.S.43:21-3.

(b) The individual has made a claim for benefits in accordance with the provisions of subsection (a) of R.S.43:21-6.

(c) (1) The individual is able to work, and is available for work, and has demonstrated to be actively seeking work, except as hereinafter provided in this subsection or in subsection (f) of this section.

(2) The director may modify the requirement of actively seeking work if such modification of this requirement is warranted by economic conditions.

(3) No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because the individual is on vacation, without pay, during said week, if said vacation is not the result of the individual's own action as distinguished from any collective action of a collective bargaining agent or other action beyond the individual's control.

(4) (A) Subject to such limitations and conditions as the division may prescribe, an individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible because the individual is attending a training program approved for the individual by the division to enhance the individual's employment

opportunities or because the individual failed or refused to accept work while attending such program.

(B) For the purpose of this paragraph (4), any training program shall be regarded as approved by the division for the individual if the program and the individual meet the following requirements:

(i) The training is for a labor demand occupation and is likely to enhance the individual's marketable skills and earning power;

(ii) The training is provided by a competent and reliable private or public entity approved by the Commissioner of Labor pursuant to the provisions of section 8 of the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

(iii) The individual can reasonably be expected to complete the program, either during or after the period of benefits;

(iv) The training does not include on the job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives benefits; and

(v) The individual enrolls in vocational training, remedial education or a combination of both on a full-time basis.

(C) If the requirements of subparagraph (B) of this paragraph (4) are met, the division shall not withhold approval of the training program for the individual for any of the following reasons:

(i) The training includes remedial basic skills education necessary for the individual to successfully complete the vocational component of the training;

(ii) The training is provided in connection with a program under which the individual may obtain a college degree, including a post-graduate degree;

(iii) The length of the training period under the program; or

(iv) The lack of a prior guarantee of employment upon completion of the training.

(D) For the purpose of this paragraph (4), "labor demand occupation" means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers, including, but not limited to, an occupation designated as a labor demand occupation by the New Jersey Occupational Information Coordinating Committee pursuant to the provisions of subsection h. of section 1 of P.L.1987, c.457 (C.34:1A-76) or section 12 of P.L.1992, c.43 (C.34:15D-12).

(5) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason

of the individual's attendance before a court in response to a summons for service on a jury.

(6) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason of the individual's attendance at the funeral of an immediate family member, provided that the duration of the attendance does not extend beyond a two-day period.

For purposes of this paragraph, "immediate family member" includes any of the following individuals: father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, foster child, sister or brother of the unemployed individual and any relatives of the unemployed individual residing in the unemployed individual's household.

(d) The individual has been totally or partially unemployed for a waiting period of one week in the benefit year which includes that week. When benefits become payable with respect to the third consecutive week next following the waiting period, the individual shall be eligible to receive benefits as appropriate with respect to the waiting period. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) If benefits have been paid, or are payable with respect thereto; provided that the requirements of this paragraph shall be waived with respect to any benefits paid or payable for a waiting period as provided in this subsection;

(2) If it has constituted a waiting period week under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.);

(3) Unless the individual fulfills the requirements of subsections (a) and (c) of this section;

(4) If with respect thereto, claimant was disqualified for benefits in accordance with the provisions of subsection (d) of R.S.43:21-5.

(e) (1) With respect to a base year as defined in subsection (c) of R.S.43:21-19, the individual has established at least 20 base weeks as defined in subsection (t) of R.S.43:21-19, or, in those instances in which the individual has not established 20 base weeks, except as otherwise provided in paragraph (3) of this subsection, for benefit years commencing on or after October 1, 1984 and before January 1, 1996, the individual has earned 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S.43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, or more in the individual's base year.

(2) With respect to benefit years commencing on or after January 1, 1996, except as otherwise provided in paragraph (3) of this

subsection, the individual has, during his base year as defined in subsection (c) of R.S.43:21-19:

(A) Established at least 20 base weeks as defined in paragraph (2) of subsection (t) of R.S.43:21-19; or

(B) If the individual has not met the requirements of subparagraph (A) of this paragraph (2), earned remuneration not less than an amount 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S.43:21-3(c), which amount shall be adjusted to the next higher multiple of $100.00 if not already a multiple thereof; or

(C) If the individual has not met the requirements of subparagraph (A) or (B) of this paragraph (2), earned remuneration not less than an amount 1,000 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $100.00 if not already a multiple thereof.

(3) Notwithstanding the provisions of paragraph (1) or paragraph (2) of this subsection, an unemployed individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops shall, subject to the limitations of subsection (i) of R.S.43:21-19, be eligible to receive benefits if during his base year, as defined in subsection (c) of R.S.43:21-19, the individual:

(A) Has established at least 20 base weeks as defined in paragraph (1) of subsection (t) of R.S.43:21-19; or

(B) Has earned 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S.43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, or more; or

(C) Has performed at least 770 hours of service in the production and harvesting of agricultural crops.

(4) The individual applying for benefits in any successive benefit year has earned at least six times his previous weekly benefit amount and has had four weeks of employment since the beginning of the immediately preceding benefit year. This provision shall be in addition to the earnings requirements specified in paragraph (1), (2), or (3) of this subsection, as applicable.

(f) (1) The individual has suffered any accident or sickness not compensable under the workers' compensation law, R.S.34:15-1 et seq. and resulting in the individual's total disability to perform any work for remuneration, and would be eligible to receive benefits under this chapter (R.S.43:21-1 et seq.) (without regard to the

maximum amount of benefits payable during any benefit year) except for the inability to work and has furnished notice and proof of claim to the division, in accordance with its rules and regulations, and payment is not precluded by the provisions of R.S.43:21-3(d); provided, however, that benefits paid under this subsection (f) shall be computed on the basis of only those base year wages earned by the claimant as a "covered individual," as defined in R.S.43:21-27(b); provided further that no benefits shall be payable under this subsection to any individual:

(A) For any period during which such individual is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist or chiropractor;

(B) (Deleted by amendment, P.L.1980, c.90.)

(C) For any period of disability due to willfully or intentionally self-inflicted injury, or to injuries sustained in the perpetration by the individual of a crime of the first, second or third degree;

(D) For any week with respect to which or a part of which the individual has received or is seeking benefits under any unemployment compensation or disability benefits law of any other state or of the United States; provided that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such benefits, this disqualification shall not apply;

(E) For any week with respect to which or part of which the individual has received or is seeking disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.);

(F) For any period of disability commencing while such individual is a "covered individual," as defined in subsection (b) of section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27).

(2) Benefit payments under this subsection shall be charged to and paid from the State disability benefits fund established by the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and shall not be charged to any employer account in computing any employer's experience rate for contributions payable under this chapter.

(g) Benefits based on service in employment defined in subparagraphs (B) and (C) of R.S.43:21-19(i)(1) shall be payable in the same amount and on the terms and subject to the same conditions as benefits payable on the basis of other service subject to the "unemployment compensation law"; except that, notwithstanding any other provisions of the "unemployment compensation law":

(1) With respect to service performed after December 31, 1977, in an instructional research, or principal administrative capacity for an educational institution, benefits shall not be paid based on

such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) With respect to weeks of unemployment beginning after September 3, 1982, on the basis of service performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual under this paragraph (2) and the individual was not offered an opportunity to perform these services for the educational institution for the second of any academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause;

(3) With respect to those services described in paragraphs (1) and (2) above, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such period or holiday recess;

(4) With respect to any services described in paragraphs (1) and (2) above, benefits shall not be paid as specified in paragraphs (1), (2), and (3) above to any individual who performed those services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing those services to one or more educational institutions.

(h) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in

sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sports seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(i) (1) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed and was lawfully present for the purpose of performing the services or otherwise was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) (8 U.S.C.§1153 (a)(7)) or section 212(d)(5) (8 U.S.C.§1182 (d)(5)) of the Immigration and Nationality Act (8 U.S.C.§1101 et seq.); provided that any modifications of the provisions of section 3304(a)(14) of the Federal Unemployment Tax Act (26 U.S.C.§3304 (a)(14)), as provided by Pub.L.94-566, which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under State law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of alien status shall be made except upon a preponderance of the evidence.

(j) Notwithstanding any other provision of this chapter, the director may, to the extent that it may be deemed efficient and economical, provide for consolidated administration by one or more representatives or deputies of claims made pursuant to subsection (f) of this section with those made pursuant to Article III (State plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

2. R.S.43:21-14 is amended to read as follows:

Periodic contribution reports.

43:21-14. (a)(1) In addition to such reports as may be required under the provisions of subsection (g) of R.S.43:21-11, every employer shall file with the controller periodical contribution reports on such forms and at such times as the controller shall prescribe, to disclose the employer's liability for contributions under the provisions of this chapter (R.S.43:21-1 et seq.), and at the time of filing each contribution report shall pay the contributions required by this chapter (R.S.43:21-1 et seq.), for the period covered by such report. The controller may require that such reports shall be under oath of the employer. Any employer who shall fail to file any report, required by the controller, on or before the last day for the filing thereof shall pay a penalty of $5.00 for each day of delinquency until and including the fifth day following such last day and for any period of delinquency after such fifth day, a penalty of $5.00 a day or 20% of the amount of the contributions due and payable by the employer for the period covered by the report, whichever is the lesser; if there be no liability for contributions for the period covered by any contribution report or in the case of any report other than a contribution report, the employer or employing unit shall pay a penalty of $5.00 a day for each day of delinquency in filing or $25.00, whichever is the lesser; provided, however, that when it is shown to the satisfaction of the controller that the failure to file any such report was not the result of fraud or an intentional disregard of this chapter (R.S.43:21-1 et seq.), or the regulations promulgated hereunder, the controller, in his discretion, may remit or abate any unpaid penalties heretofore or hereafter imposed under this section. On or before October 1 of each year, the controller shall submit to the Commissioner of Labor a report covering the 12-month period ending on the preceding June 30, and showing the names and addresses of all employers for whom the controller remitted or abated any penalties, or ratified any remission or abatement of penalties, and the amount of such penalties with respect to each employer. Any employer who shall fail to pay the contributions due for any period, on or before the date they are required by the controller to be paid, shall pay interest on the amount thereof from such date until the date of payment thereof, at the rate of 1% a month through June 30, 1981 and at the rate of 1 1/4% a month after June 30, 1981. Upon the written request of any employer or employing unit, filed with the controller on or before the due date of any report or contribution

payment, the controller, for good cause shown, may grant, in writing, an extension of time for the filing of such report or the paying of such contribution, with interest at the applicable rate; provided no such extension shall exceed 30 days and that no such extension shall postpone payment of any contribution for any period beyond the day preceding the last day for filing tax returns under Title IX of the federal Social Security Act for the year in which said period occurs.

(2)(A) For the calendar quarter commencing July 1, 1984 and each successive quarter thereafter, each employer shall file a report with the controller within 30 days after the end of each quarter in a form and manner prescribed by the controller, listing the name, social security number and wages paid to each employee and the number of base weeks (as defined in subsection (t) of R.S.43:21-19) worked by the employee during the calendar quarter. (B) Any employer who fails without reasonable cause to comply with the reporting requirements of this paragraph (2) shall be liable for a penalty in the following amount for each employee with respect to whom the employer is required to file a report but who is not included in the report or for whom the required information is not accurately reported for each employee required to be included, whether or not the employee is included:

(i) For the first failure for one quarter in any eight consecutive quarters, $5.00 for each employee;

(ii) For the second failure for any quarter in any eight consecutive quarters, $10.00 for each employee; and

(iii) For the third failure for any quarter in any eight consecutive quarters, and for any failure in any eight consecutive quarters, which failure is subsequent to the third failure, $25.00 for each employee.

(C) Information reported by employers as requested by this paragraph (2) shall be used by the Department of Labor for the purpose of determining eligibility for benefits of individuals in accordance with the provisions of R.S. 43:21-1 et seq. Notwithstanding the provisions of subsection (g) of R.S.43:21-11, the Department of Labor is hereby authorized to provide the Department of Human Services and the Higher Education Assistance Authority with information reported by employers as required by this paragraph (2). For each fiscal year, the Director of the Division of Budget and Accounting of the Department of the Treasury shall charge the appropriate account of the Department of Human Services and the Higher Education Assistance Authority in

amounts sufficient to reimburse the Department of Labor for the cost of providing information under this subparagraph (C).

(D) For the purpose of administering the provisions of this paragraph (2), all appropriations, files, books, papers, records, equipment and other property, and employees currently assigned to the Division of Taxation for the implementation of the "Wage Reporting Act," P.L.1980, c.48 (C.54:1-55 et seq.), shall be transferred to the Department of Labor as of September 1, 1984 in accordance with the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

(b) The contributions, penalties, and interest due from any employer under the provisions of this chapter (R.S.43:21-1 et seq.), from the time they shall be due, shall be a personal debt of the employer to the State of New Jersey, recoverable in any court of competent jurisdiction in a civil action in the name of the State of New Jersey; provided, however, that except in the event of fraud, no employer shall be liable for contributions or penalties unless contribution reports have been filed or assessments have been made in accordance with subsection (c) or (d) of this section before four years have elapsed from the last day of the calendar year with respect to which any contributions become payable under this chapter (R.S.43:21-1 et seq.), nor shall any employer be required to pay interest on any such contribution unless contribution reports were filed or assessments made within such four-year period; provided further that if such contribution reports were filed or assessments made within the four-year period, no civil action shall be instituted, nor shall any certificate be issued to the Clerk of the Superior Court under subsection (e) of this section, except in the event of fraud, after six years have elapsed from the last day of the calendar year with respect to which any contributions become payable under this chapter (R.S.43:21-1 et seq.), or July 1, 1958, whichever is later. Payments received from an employer on account of any debt incurred under the provisions of this chapter (R.S.43:21-1 et seq.) may be applied by the controller on account of the contribution liability of the employer and then to interest and penalties, and any balance remaining shall be recoverable by the controller from the employer. Upon application therefor, the controller shall furnish interested persons and entities certificates of indebtedness covering employers, employing units and others for contributions, penalties and interest, for each of which certificates the controller shall charge and collect a fee of $2.00 per name; no such certificate to be issued, however,

for a fee of less than $10.00. All fees so collected shall be paid into the unemployment compensation administration fund.

(c) If any employer shall fail to make any report as required by the rules and regulations of the division pursuant to the provisions of this chapter (R.S.43:21-1 et seq.), the controller may make an estimate of the liability of such employer from any information it may obtain, and, according to such estimate so made, assess such employer for the contributions, penalties, and interest due the State from him, give notice of such assessment to the employer, and make demand upon him for payment.

(d) After a report is filed under the provisions of this chapter (R.S.43:21-1 et seq.) and the rules and regulations thereof, the controller shall cause the report to be examined and shall make such further audit and investigation as it may deem necessary, and if therefrom there shall be determined that there is a deficiency with respect to the payment of the contributions due from such employer, the controller shall assess the additional contributions, penalties, and interest due the State from such employer, give notice of such assessment to the employer, and make demand upon him for payment.

(e) As an additional remedy, the controller may issue to the Clerk of the Superior Court of New Jersey a certificate stating the amount of the employer's indebtedness under this chapter (R.S.43:21-1 et seq.) and describing the liability, and thereupon the clerk shall immediately enter upon his record of docketed judgments such certificate or an abstract thereof and duly index the same. Any such certificate or abstract, heretofore or hereafter docketed, from the time of docketing shall have the same force and effect as a judgment obtained in the Superior Court of New Jersey, and the controller shall have all the remedies and may take all the proceedings for the collection thereof which may be had or taken upon the recovery of such a judgment in a civil action upon contract in said court. Such debt, from the time of docketing thereof, shall be a lien on and bind the lands, tenements and hereditaments of the debtor.

The Clerk of the Superior Court shall be entitled to receive for docketing such certificate, $0.50, and for a certified transcript of such docket, $0.50. If the amount set forth in said certificate as a debt shall be modified or reversed upon review, as hereinafter provided, the Clerk of the Superior Court shall, when an order of modification or reversal is filed, enter in the margin of the docket opposite the entry of the judgment, the word "modified" or "reversed," as the case may be, and the date of such modification or reversal.

The employer, or any other party having an interest in the property upon which the debt is a lien, may deposit the amount claimed in the certificate with the Clerk of the Superior Court of New Jersey, together with an additional 10% of the amount thereof, or $100.00, whichever amount is the greater, to cover interest and the costs of court, or in lieu of depositing the amount in cash, may give a bond to the State of New Jersey in double the amount claimed in the certificate, and file the same with the Clerk of the Superior Court. Said bond shall have such surety and shall be approved in the manner required by the Rules Governing the Courts of the State of New Jersey.

After the deposit of said money or the filing of said bond, the employer, or any other party having an interest in the said property, may, after exhausting all administrative remedies, secure judicial review of the legality or validity of the indebtedness or the amount thereof, and the said deposit of cash shall be as security for, and the bond shall be conditioned to prosecute, the judicial review with effect.

Upon the deposit of said money or the filing of the said bond with the Clerk of the Superior Court, all proceedings on such judgment shall be stayed until the final determination of the cause, and the moneys so deposited shall be subject to the lien of the indebtedness and costs and interest thereon, and the lands, tenements, and hereditaments of said debtor shall forthwith be discharged from the lien of the State of New Jersey and no execution shall issue against the same by virtue of said judgment.

Notwithstanding the provisions of subsections (a) through (c) of this section, the Department of Labor may, with the concurrence of the State Treasurer, when all reasonable efforts to collect amounts owed have been exhausted, or to avoid litigation, reduce any liability for contributions, penalties and interest, provided no portion of those amounts represents contributions made by an employee pursuant to subsection (d) of R.S.43:21-7.

(f) If, not later than two years after the calendar year in which any moneys were erroneously paid to or collected by the controller, whether such payments were voluntarily or involuntarily made or made under mistake of law or of fact, an employer, employing unit, or employee who has paid such moneys shall make application for an adjustment thereof, the said moneys shall, upon order of the controller, be either credited or refunded, without interest, from the appropriate fund. For like cause and within the same period, credit or refund may be so made on the initiative of the controller.

(g) All interest and penalties collected pursuant to this section shall be paid into a special fund to be known as the unemployment compensation auxiliary fund; all moneys in this special fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury, and shall be expended, under legislative appropriation, for the purpose of aiding in defraying the cost of the administration of this chapter (R.S.43:21-1 et seq.); for the repayment of any interest bearing advances made from the federal unemployment account pursuant to the provisions of section 1202(b) of the Social Security Act, 42 U.S.C. § 1322; and for essential and necessary expenditures in connection with programs designed to stimulate employment, as determined by the Commissioner of Labor, except that any moneys in this special fund which are not otherwise appropriated shall be applied to aiding in the defraying of necessary costs of the administration of this chapter (R.S.43:21-1 et seq.) as determined by the Commissioner of Labor. The Treasurer of the State shall be ex officio the treasurer and custodian of this special fund and, subject to legislative appropriation, shall administer the fund in accordance with the directions of the controller. Any balances in this fund shall not lapse at any time, but shall be continuously available, subject to legislative appropriation, to the controller for expenditure. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation auxiliary fund, in an amount to be fixed by the division, the premiums for such bond to be paid from the moneys in the said special fund.

3. R.S.43:21-19 is amended to read as follows:

Definitions.

43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et seq.), unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid during a calendar year (regardless of when earned) by an employer for employment.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher, except that any year or years throughout which an employer has had no "annual payroll" because of military service shall be deleted from the reckoning; the "average annual payroll" in such case is to be determined on the basis of the prior three or five calendar years in each of which

the employer had an "annual payroll" in the operation of his business, if the employer resumes his business within 12 months after separation, discharge or release from such service, under conditions other than dishonorable, and makes application to have his "average annual payroll" determined on the basis of such deletion within 12 months after he resumes his business; provided, however, that "average annual payroll" solely for the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means the average of the annual payrolls of any employer on which he paid contributions to the State disability benefits fund for the last three or five preceding calendar years, whichever average is higher; provided further that only those wages be included on which employer contributions have been paid on or before January 31 (or the next succeeding day if such January 31 is a Saturday or Sunday) immediately preceding the beginning of the 12-month period for which the employer's contribution rate is computed.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter (R.S.43:21-1 et seq.), with respect to his unemployment.

(c) (1) "Base year" with respect to benefit years commencing on or after July 1, 1986, shall mean the first four of the last five completed calendar quarters immediately preceding an individual's benefit year.

With respect to a benefit year commencing on or after July 1, 1995, if an individual does not have sufficient qualifying weeks or wages in his base year to qualify for benefits, the individual shall have the option of designating that his base year shall be the "alternative base year," which means the last four completed calendar quarters immediately preceding the individual's benefit year; except that, with respect to a benefit year commencing on or after October 1, 1995, if the individual also does not have sufficient qualifying weeks or wages in the last four completed calendar quarters immediately preceding his benefit year to qualify for benefits, "alternative base year" means the last three completed calendar quarters immediately preceding his benefit year and, of the calendar quarter in which the benefit year commences, the portion of the quarter which occurs before the commencing of the benefit year.

The division shall inform the individual of his options under this 1995 amendatory act. If information regarding weeks and wages for the calendar quarter or quarters immediately preceding the benefit year is not available to the division from the regular quarterly reports of wage information and the division is not able

to obtain the information using other means pursuant to State or federal law, the division may base the determination of eligibility for benefits on the affidavit of an individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. A determination of benefits based on an alternative base year shall be adjusted when the quarterly report of wage information from the employer is received if that information causes a change in the determination.

(2) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period defined as a period of disability by section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual who files a claim under the provisions of this paragraph (2) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

(3) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the workers' compensation law (chapter 15 of Title 34 of the Revised Statutes), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the period of disability was not longer than two years, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and if the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period from the time at which the individual becomes unable to work because of the compensable disability until the time that the individual becomes able to resume work and continue work on a permanent basis. An individual who files a claim under the provisions of this paragraph (3) shall not be

regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

(d) "Benefit year" with respect to any individual means the 364 consecutive calendar days beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with subsection (a) of R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of this subsection if (1) he is unemployed for the week in which, or as of which, he files a claim for benefits; and (2) he has fulfilled the conditions imposed by subsection (e) of R.S.43:21-4.

(e) (1) "Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor, and any transaction or exercise of authority by the director of the division thereunder, or under this chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by the division.

(2) "Controller" means the Office of the Assistant Commissioner for Finance and Controller of the Department of Labor, established by the 1982 Reorganization Plan of the Department of Labor.

(f) "Contributions" means the money payments to the State Unemployment Compensation Fund or the State disability benefits fund, required by R.S.43:21-7. "Payments in lieu of contributions" means the money payments to the State Unemployment Compensation Fund by employers electing or required to make payments in lieu of contributions, as provided in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

(g) "Employing unit" means the State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any individual or type of organization, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter

(R.S.43:21-1 et seq.). Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter (R.S.43:21-1 et seq.), whether such individual was hired or paid directly by such employing unit or by such agent or employee; provided the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which in either the current or the preceding calendar year paid remuneration for employment in the amount of $1,000.00 or more;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets thereof, of another which, at the time of such acquisition, was an employer subject to this chapter (R.S.43:21-1 et seq.);

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit or interest, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit for which service in employment as defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed after December 31, 1977;

(6) Any employing unit for which service in employment as defined in R.S.43:21-19 (i) (1) (C) is performed after December 31, 1971 and which in either the current or the preceding calendar year paid remuneration for employment in the amount of $1,000.00 or more;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection (h) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of the "unemployment compensation law" for full tax

credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter (R.S.43:21-1 et seq.);

(8) (Deleted by amendment; P.L.1977, c.307.)

(9) (Deleted by amendment; P.L.1977, c.307.)

(10) (Deleted by amendment; P.L.1977, c.307.)

(11) Any employing unit subject to the provisions of the Federal Unemployment Tax Act within either the current or the preceding calendar year, except for employment hereinafter excluded under paragraph (7) of subsection (i) of this section;

(12) Any employing unit for which agricultural labor in employment as defined in R.S.43:21-19 (i) (1) (I) is performed after December 31, 1977;

(13) Any employing unit for which domestic service in employment as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31, 1977;

(14) Any employing unit which having become an employer under the "unemployment compensation law" (R.S.43:21-1 et seq.), has not under R.S.43:21-8 ceased to be an employer; or for the effective period of its election pursuant to R.S.43:21-8, any other employing unit which has elected to become fully subject to this chapter (R.S.43:21-1 et seq.).

(i) (1) "Employment" means:

(A) Any service performed prior to January 1, 1972, which was employment as defined in the "unemployment compensation law" (R.S.43:21-1 et seq.) prior to such date, and, subject to the other provisions of this subsection, service performed on or after January 1, 1972, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(B) (i) Service performed after December 31, 1971 by an individual in the employ of this State or any of its instrumentalities or in the employ of this State and one or more other states or their instrumentalities for a hospital or institution of higher education located in this State, if such service is not excluded from "employment" under paragraph (D) below.

(ii) Service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of the foregoing and one or more other states or political subdivisions, if such service is not excluded from "employment" under paragraph (D) below.

(C) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization, which is excluded from "employment" as defined in the Federal Unemployment Tax Act, solely by reason of section 3306 (c) (8) of that act, if such service is not excluded from "employment" under paragraph (D) below.

(D) For the purposes of paragraphs (B) and (C), the term "employment" does not apply to services performed:

(i) In the employ of (I) a church or convention or association of churches, or (II) an organization, or school which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education, and after December 31, 1977, in the employ of a governmental entity referred to in R.S.43:21-19 (i) (1) (B), if such service is performed by an individual in the exercise of duties:

(aa) as an elected official;

(bb) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(cc) as a member of the State National Guard or Air National Guard;

(dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; or

(ee) in a position which, under or pursuant to the laws of this State, is designated as a major nontenured policy making or advisory position, or a policy making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week;

(iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market;

(v) By an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program

assisted in whole or in part by any federal agency or an agency of a state or political subdivision thereof; or

(vi) Prior to January 1, 1978, for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(E) The term "employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands, after December 31, 1971 and prior to January 1 of the year following the year in which the U.S. Secretary of Labor approves the unemployment compensation law of the Virgin Islands, under section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C.§3304 (a)) in the employ of an American employer (other than the service which is deemed employment under the provisions of R.S.43:21-19 (i) (2) or (5) of the parallel provisions of another state's unemployment compensation law), if:

(i) The American employer's principal place of business in the United States is located in this State; or

(ii) The American employer has no place of business in the United States, but (I) the American employer is an individual who is a resident of this State; or (II) the American employer is a corporation which is organized under the laws of this State; or (III) the American employer is a partnership or trust and the number of partners or trustees who are residents of this State is greater than the number who are residents of another state; or

(iii) None of the criteria of divisions (i) and (ii) of this subparagraph (E) is met but the American employer has elected to become an employer subject to the "unemployment compensation law" (R.S.43:21-1 et seq.) in this State, or the American employer having failed to elect to become an employer in any state, the individual has filed a claim for benefits, based on such service, under the law of this State;

(iv) An "American employer," for the purposes of this subparagraph (E), means (I) an individual who is a resident of the United States; or (II) a partnership, if two-thirds or more of the partners are residents of the United States; or (III) a trust, if all the trustees are residents of the United States; or (IV) a corporation organized under the laws of the United States or of any state.

(F) Notwithstanding R.S.43:21-19 (i) (2), all service performed after January 1, 1972 by an officer or member of the crew of an American vessel or American aircraft on or in connection with

such vessel or aircraft, if the operating office from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this State.

(G) Notwithstanding any other provision of this subsection, service in this State with respect to which the taxes required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the "unemployment compensation law" (R.S.43:21-1 et seq.).

(H) The term "United States" when used in a geographical sense in subsection R.S.43:21-19 (i) includes the states, the District of Columbia, the Commonwealth of Puerto Rico and, effective on the day after the day on which the U.S. Secretary of Labor approves for the first time under section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C§3304 (a)) an unemployment compensation law submitted to the Secretary by the Virgin Islands for such approval, the Virgin Islands.

(I) (i) Service performed after December 31, 1977 in agricultural labor in a calendar year for an entity which is an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such year; or for an employing unit which:

(aa) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000.00 or more for individuals employed in agricultural labor, or

(bb) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time.

(ii) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other entity shall be treated as an employee of such crew leader:

(aa) if such crew leader holds a certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act, Pub.L.97-470 (29 U.S.C.§1801 et seq.), or P.L.1971, c.192 (C.34:8A-7 et seq.); or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(bb) if such individual is not an employee of such other person for whom services were performed.

(iii) For the purposes of subparagraph (I) (i) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor or any other entity and who is not treated as an employee of such crew leader under (I) (ii):

(aa) such other entity and not the crew leader shall be treated as the employer of such individual; and

(bb) such other entity shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other entity) for the service in agricultural labor performed for such other entity.

(iv) For the purpose of subparagraph (I) (i), the term "crew leader" means an individual who:

(aa) furnishes individuals to perform service in agricultural labor for any other entity;

(bb) pays (either on his own behalf or on behalf of such other entity) the individuals so furnished by him for the service in agricultural labor performed by them; and

(cc) has not entered into a written agreement with such other entity under which such individual is designated as an employee of such other entity.

(J) Domestic service after December 31, 1977 performed in the private home of an employing unit which paid cash remuneration of $1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year.

(2) The term "employment" shall include an individual's entire service performed within or both within and without this State if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

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(4) Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if the individual performing such services is a resident of this State and the employing unit for whom such services are performed files with the division an election that the entire service of such individual shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.).

(5) Service shall be deemed to be localized within a state if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) unless and until it is shown to the satisfaction of the division that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(7) Provided that such services are also exempt under the Federal Unemployment Tax Act, as amended, or that contributions with respect to such services are not required to be paid into a state unemployment fund as a condition for a tax offset credit against the tax imposed by the Federal Unemployment Tax Act, as amended, the term "employment" shall not include:

(A) Agricultural labor performed prior to January 1, 1978; and after December 31, 1977, only if performed in a calendar year for an entity which is not an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such calendar year; or unless performed for an employing unit which:

(i) during a calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000.00 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time;

(B) Domestic service in a private home performed prior to January 1, 1978; and after December 31, 1977, unless performed in the private home of an employing unit which paid cash remuneration of $1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year;

(C) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(D) Service performed prior to January 1, 1978, in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions, except as provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ of the South Jersey Port Corporation or its successors;

(E) Service performed in the employ of any other state or its political subdivisions or of an instrumentality of any other state or states or their political subdivisions to the extent that such instrumentality is with respect to such service exempt under the Constitution of the United States from the tax imposed under the Federal Unemployment Tax Act, as amended, except as provided in R.S.43:21-19 (i) (1) (B) above;

(F) Service performed in the employ of the United States Government or of any instrumentality of the United States except under the Constitution of the United States from the contributions imposed by the "unemployment compensation law," except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Secretary of Labor of the United States under section 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C.§3304), the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as

is provided in R.S.43:21-14 (f) with respect to contributions erroneously paid to or collected by the division;

(G) Services performed in the employ of fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

(H) Services performed as a member of the board of directors, a board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or of the United States, where such services do not constitute the principal employment of the individual;

(I) Service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(J) Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;

(K) Services performed by real estate salesmen or brokers who are compensated wholly on a commission basis;

(L) Services performed in the employ of any veterans' organization chartered by Act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, inures to the benefit of any private shareholder or individual;

(M) Service performed for or in behalf of the owner or operator of any theatre, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band," entertainer, vaudeville artist, actor, actress, singer or other entertainer;

(N) Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than $1,000.00 in a calendar year;

(O) Services performed in the sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses;

(P) Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;

(Q) Service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and (ii) the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(R) Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organizations Immunities Act (22 U.S.C.§288 et seq.);

(S) Service covered by an election duly approved by an agency charged with the administration of any other state or federal unemployment compensation or employment security law, in accordance with an arrangement pursuant to R.S.43:21-21 during the effective period of such election;

(T) Service performed in the employ of a school, college, or university if such service is performed (i) by a student enrolled at such school, college, or university on a full-time basis in an educational program or completing such educational program leading to a degree at any of the severally recognized levels, or (ii) by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance;

(U) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service

is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school approved pursuant to the laws of this State;

(W) Services performed after the effective date of this amendatory act by agents of mutual benefit associations if the compensation to such agents for such services is wholly on a commission basis;

(X) Services performed by operators of motor vehicles weighing 18,000 pounds or more, licensed for commercial use and used for the highway movement of motor freight, who own their equipment or who lease or finance the purchase of their equipment through an entity which is not owned or controlled directly or indirectly by the entity for which the services were performed and who were compensated by receiving a percentage of the gross revenue generated by the transportation move or by a schedule of payment based on the distance and weight of the transportation move;

(Y) Services performed by a certified shorthand reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.), provided to a third party by the reporter who is referred to the third party pursuant to an agreement with another certified shorthand reporter or shorthand reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement;

(Z) Services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, who acts as an independent contractor, is paid on a commission basis, sets his own work schedule and receives no benefits, sick leave, vacation or other leave from the travel agent owning the facilities.

(8) If one-half or more of the services in any pay period performed by an individual for an employing unit constitutes employment, all the services of such individual shall be deemed to be employment; but if more than one-half of the service in any pay period performed by an individual for an employing unit does not constitute employment, then none of the service of such indi-

vidual shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment for service is ordinarily made by an employing unit to individuals in its employ.

(9) Services performed by the owner of a limousine franchise (franchisee) shall not be deemed to be employment subject to the "unemployment compensation law," R.S.43:21-1 et seq., with regard to the franchisor if:

(A) The limousine franchisee is incorporated;

(B) The franchisee is subject to regulation by the Interstate Commerce Commission;

(C) The limousine franchise exists pursuant to a written franchise arrangement between the franchisee and the franchisor as defined by section 3 of P.L.1971, c.356 (C.56:10-3); and

(D) The franchisee registers with the Department of Labor and receives an employer registration number.

(j) "Employment office" means a free public employment office, or branch thereof operated by this State or maintained as a part of a State-controlled system of public employment offices.

(k) (Deleted by amendment, P.L.1984, c.24.)

(l) "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands and Puerto Rico.

(m) "Unemployment."

(1) An individual shall be deemed "unemployed" for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate, including any week during which he is on vacation without pay; provided such vacation is not the result of the individual's voluntary action, except that for benefit years commencing on or after July 1, 1984, an officer of a corporation, or a person who has more than a 5% equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation shall not be deemed to be unemployed in any week during the individual's term of office or ownership in the corporation.

(2) The term "remuneration" with respect to any individual for benefit years commencing on or after July 1, 1961, and as used in this subsection, shall include only that part of the same which in any week exceeds 20% of his weekly benefit rate (fractional parts of a dollar omitted) or $5.00, whichever is the larger.

(3) An individual's week of unemployment shall be deemed to commence only after the individual has filed a claim at an unem-

ployment insurance claims office, except as the division may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter (R.S.43:21-1 et seq.), from which administrative expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.

(o) "Wages" means remuneration paid by employers for employment. If a worker receives gratuities regularly in the course of his employment from other than his employer, his "wages" shall also include the gratuities so received, if reported in writing to his employer in accordance with regulations of the division, and if not so reported, his "wages" shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from his employer, whichever is the higher.

(p) "Remuneration" means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash.

(q) "Week" means for benefit years commencing on or after October 1, 1984, the calendar week ending at midnight Saturday, or as the division may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30, or December 31.

(s) "Investment company" means any company as defined in subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

(t) (1) "Base week" for a benefit year commencing on or after October 1, 1985 and before January 1, 1996 means any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration equal to not less than 20% of the Statewide average weekly remuneration defined in subsection (c) of R.S.43:21-3 which shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof; provided if in any calendar week an individual is in employment with more than one employer, he may in such calendar week establish a base week with respect to each such employer from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (1) during such week.

(2) "Base week," for a benefit year commencing on or after January 1, 1996, means:

(A) Any calendar week of an individual's base year during which the individual earned in employment from an employer

remuneration not less than an amount which is 20% of the Statewide average weekly remuneration defined in subsection (c) of R.S.43:21-3 which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this subparagraph (A) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this subparagraph (A) during that week; or

(B) If the individual does not establish in his base year 20 or more base weeks as defined in subparagraph (A) of this paragraph (2), any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this subparagraph (B) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration not less than the amount defined in this subparagraph (B) during that week.

(u) "Average weekly wage" means the amount derived by dividing an individual's total wages received during his base year base weeks (as defined in subsection (t) of this section) from that most recent base year employer with whom he has established at least 20 base weeks, by the number of base weeks in which such wages were earned. In the event that such claimant had no employer in his base year with whom he had established at least 20 base weeks, then such individual's average weekly wage shall be computed as if all of his base week wages were received from one employer and as if all his base weeks of employment had been performed in the employ of one employer.

For the purpose of computing the average weekly wage, the monetary alternative in subparagraph (B) of paragraph (2) of subsection (e) of R.S.43:21-4 shall only apply in those instances where the individual did not have at least 20 base weeks in the base year. For benefit years commencing on or after July 1, 1986, "average weekly wage" means the amount derived by dividing an

individual's total base year wages by the number of base weeks worked by the individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be 52.

(v) "Initial determination" means, subject to the provisions of R.S.43:21-6 (b) (2) and (3), a determination of benefit rights as measured by an eligible individual's base year employment with a single employer covering all periods of employment with that employer during the base year. For benefit years commencing prior to July 1, 1986, subject to the provisions of R.S.43:21-3 (d) (3), if an individual has been in employment in his base year with more than one employer, no benefits shall be paid to that individual under any successive initial determination until his benefit rights have been exhausted under the next preceding initial determination.

(w) "Last date of employment" means the last calendar day in the base year of an individual on which he performed services in employment for a given employer.

(x) "Most recent base year employer" means that employer with whom the individual most recently, in point of time, performed service in employment in the base year.

(y) (1) "Educational institution" means any public or other nonprofit institution (including an institution of higher education):

(A) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor (s) or teacher (s);

(B) Which is approved, licensed or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the State to approve, license or issue a permit for the operation of a school; and

(C) Which offers courses of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(2) "Institution of higher education" means an educational institution which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Is legally authorized in this State to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is

acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

(z) "Hospital" means an institution which has been licensed, certified or approved under the law of this State as a hospital.

4. This act shall take effect immediately.

Approved August 22, 1995.

CHAPTER 235

AN ACT establishing a School Report Card Program, 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:7E-1 Findings, declarations on school report card programs.

1. The Legislature finds and declares that:

a. The State of New Jersey has invested more resources than virtually any other state in the nation in its students, teachers and schools, yet parents and other interested members of the community have a difficult time determining the educational results of the expenditure of their tax dollars;

b. Obtaining complete and accurate information on the performance of local schools can be a difficult and confusing task and concerned individuals have no place to turn to get an objective and authoritative evaluation of their local schools;

c. The establishment of school report cards would provide a simple and uniform mechanism for measuring the return on the investment which the people of this State are making in the education of their children;

d. Nationally, a school report card program is recognized as an important component of the current educational reform effort; and

e. The Commissioner of Education is encouraged to seek continued financial and technical support from the business and nonprofit communities for the preparation and dissemination of the report cards.

C.18A:7E-2 School Report Card Program.

2. The Commissioner of Education shall develop and administer a School Report Card Program. The program shall provide for the annual preparation and dissemination of a school report card to parents and other interested taxpayers within each local school district. In order to avoid duplication and minimize the expense of this program, the commissioner shall coordinate the school report card program with other State and federal programs that require school districts to collect and publish data. The commissioner is authorized to collect the data and to define the terms as necessary to effectuate the purposes of this act.

C.18A:7E-3 Report card information.

3. Report cards issued pursuant to section 2 of this act shall include, but not be limited to, the following information for:

a. the school district and for each school within the district, as appropriate:

(1) results of the elementary assessment programs;

(2) results of the Early Warning Test;

(3) results of the High School Proficiency Test;

(4) daily attendance records for students and professional staff;

(5) student graduation and dropout rates;

(6) annual student scores on the Scholastic Aptitude Test;

(7) total student enrollment, percentage of limited English proficient students, percentage of students in advanced placement courses, and any other school characteristics which the commissioner deems appropriate;

(8) instructional resources including teacher/student ratio, average class size and amount of instructional time per day, as calculated by formulas specified by the commissioner; and

(9) a written narrative by the school principal or a designee which describes any special achievements, events, problems or initiatives of the school or district; and

b. the school district, as appropriate:

(1) per pupil expenditures and State aid ratio;

(2) percent of budget allocated for salaries and benefits of administrative personnel;

(3) percent of budget allocated for salaries and benefits of teachers;

(4) percentage increase over the previous year for salaries and benefits of administrative and instructional personnel;

(5) the number of administrative personnel and the ratio of administrative personnel to instructional personnel;

(6) a profile of the most recent graduating class concerning their educational or employment plans following graduation; and

(7) any other information which the commissioner deems appropriate.

For the purposes of this section, the Commissioner of Education shall establish a uniform methodology for the reporting of the data concerning administrative personnel on a full-time equivalent basis.

C.18A:7E-4 Statewide, district averages included.

4. The school report card shall include, for purposes of comparison and review, the Statewide average for each element reported by school and a comparison of the district averages for each element reported by district with the averages of school districts which have similar characteristics as defined by the commissioner.

C.18A:7E-5 Rules, regulations.

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

6. There is appropriated to the Department of Education from the General Fund the sum of $45,000 to effectuate the purposes of this act.

7. This act shall take effect immediately and shall apply to report cards issued during the 1995-96 school year and thereafter.

Approved August 23, 1995.

CHAPTER 236

AN ACT establishing a program to penalize excessive administrative expenditures and to reward administrative efficiency in the public schools and supplementing Title 18A of the New Jersey Statutes.

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

C.18A:7E-6 Short title.

1. This act shall be known and may be cited as the "School Efficiency Program Act."

C.18A:7E-7 Findings, declarations on programs of fiscal rewards and sanctions in the public schools.

2. The Legislature finds and declares that:

a. New Jersey spends more money per pupil than any other State in the nation, but is near the last in the proportion of education dollars spent on actual classroom instruction;

b. The achievement of students is directly and strongly related to the proportion of education resources that are devoted to classroom instruction;

c. There is a need to direct State and local resources to the classroom and to take decisive action against excessive administrative spending;

d. Excessive spending by school districts is unfair to the taxpayers of the community who have a right to see their tax dollars spent prudently and efficiently;

e. The State has an obligation to protect the rights of taxpayers to the efficient operation of public institutions; and

f. The creation of a program of fiscal rewards and sanctions will serve to promote efficient spending practices in school districts, increase the percentage of education dollars spent on classroom instruction and ultimately will result in the improvement of the achievement of students.

C.18A:7E-8 Administrative spending; penalties; appeals.

3. a. Any school district whose budgeted per pupil administrative spending for the preceding school year exceeds the median budgeted per pupil administrative spending for the preceding school year for districts of the same operating type by the percentage indicated in subsection c. of this section shall have its school aid reduced by the dollar amount of the excess. The penalty shall not exceed 10% of the district's budgeted administrative spending. All school districts shall be notified of their per pupil administrative costs and the applicable median per pupil cost by October 1 of the year preceding the affected year, and any adjustments caused by subsequent restorations of municipal reductions or proposals to exceed the permissible maximum net budget shall be made no later than November 1 of that year.

b. Administrative spending shall include expenditures for improvement of instruction services and other support services -

instructional staff; support services-general administration; support services-school administration; business and other support services, including salaries, purchased professional services, purchased technical services, other purchased services, supplies and materials, interest on current loans, and miscellaneous expenditures; and the pro rata share of fringe benefits for salaries included in the preceding categories for the employer's share of Social Security, pension payments other than for the Teachers' Pension and Annuity Fund, unemployment compensation, and other generally recognized employee benefits. Administrative spending shall not include expenditures for in-service teacher training and professional development. The amount of any judgments against the school district shall be deducted from the total amount of expenditures. All expenditures shall be based originally upon the district's budgeted data of the preceding year and adjusted in the subsequent year based upon audited data; however, the median budgeted per pupil administrative spending calculated for districts of the same operating type pursuant to subsection a. of this section shall not be recalculated.

c. The percentage shall equal 129% in the first year of implementation, 128% in the second year, 127% in the third year, 126% in the fourth year and 125% in the fifth year and each succeeding year.

d. A school district may appeal a penalty imposed pursuant to this section to the Commissioner of Education. The appeal shall be based on the following factors:

(1) an error made by the Department of Education in calculating the administrative spending of the school district;

(2) an error made by the school district in reporting data to the department;

(3) costs associated with services provided by a school district to other districts in joint educational or service arrangements other than a sending-receiving relationship; and

(4) any other factor deemed appropriate by the commissioner.

C.18A:7E-9 Eligibility for reward; criteria.

4. a. A school district shall be eligible for a reward if it meets the following criteria:

(1) the school district's budgeted per pupil administrative spending, as defined in subsection b. of section 3 of this act, is below 115% of the median budgeted per pupil administrative spending for the preceding school year for districts of the same operating type;

(2) the school district is a multi-school K-12 school district, a county vocational-technical school district or a county special services school district; and

(3) the school district is certified by the Department of Education as providing a thorough and efficient education pursuant to the provisions of section 10 of P.L.1975, c.212 (C.18A:7A-10).

b. If a district is under investigation by any agency of the State or federal government for fiscal abuse, impropriety or mismanagement, the reward shall be withheld until the district is cleared of wrongdoing.

c. The amount of funding to be distributed in rewards shall equal the total amount of funds in penalties as specified in section 3 of this act. A qualified district shall be eligible for a reward in one of two amounts, which shall be based on the total enrollment of pupils in the district. A district with an enrollment of 2,500 or more pupils shall receive a reward twice as large as a district with an enrollment of fewer than 2,500 pupils.

5. This act shall take effect immediately and shall first apply to State aid for the 1996-97 school year.

Approved August 23, 1995.

CHAPTER 237

AN ACT concerning the admission of evidence relating to a victim's manner of dress in sexual assault cases and amending N.J.S.2C:14-7.

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

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

Victim's previous sexual conduct; manner of dress.

2C:14-7. a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of N.J.S.2C:24-4 or the fourth degree crime of lewdness in violation of subsection b. of N.J.S.2C:14-4, evidence of the victim's previ-

ous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and highly material and meets the requirements of subsections c. and d. of this section and that the probative value of the evidence offered substantially outweighs its collateral nature or the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

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

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

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

e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.

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

2. This act shall take effect immediately.

Approved August 29, 1995.

CHAPTER 238

AN ACT concerning the membership of the board of trustees of the Police and Firemen's Retirement System of New Jersey and amending P.L.1944, c.255.

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

1. Section 13 of P.L.1944, c.255 (C.43:16A-13) is amended to read as follows:

C.43:16A-13 Police and Firemen's Retirement System trustees.

13. (1) Subject to the provisions of P.L.1955, c.70 (C.52:18A-95 et seq.), the general responsibility for the proper operation of the retirement system is hereby vested in a board of trustees.

(2) The board shall consist of 11 trustees as follows:

(a) Five members to be appointed by the Governor, with the advice and consent of the Senate, who shall serve for a term of office of four years and until their successors are appointed and who shall be private citizens of the State of New Jersey who are neither an officer thereof nor an active or retired member of any police or fire department thereof. Of the four members initially appointed by the Governor pursuant to P.L.1992, c.125 (C.43:4B-1 et al.), one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years. The member appointed by the Governor pursuant to the provisions of this amendatory act, P.L.1995, c.238, shall serve for a term of four years and until a successor is appointed.

(b) The State Treasurer or the deputy State Treasurer, when designated for that purpose by the State Treasurer.

(c) Two policemen and two firemen who shall be active members of the system and who shall be elected by the active members of the system for a term of four years according to such rules and regulations as the board of trustees shall adopt to govern such election.

(d) One retiree from the system who shall be elected by retirees from the system for a term of four years according to such rules and regulations as the board of trustees shall adopt to govern the election.

(3) Each trustee shall, after his appointment or election, take an oath of office that, so far as it devolves upon him he will diligently and honestly fulfill his duties as a board member, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State.

(4) If a vacancy occurs in the office of a trustee, the vacancy shall be filled in the same manner as the office was previously filled.

(5) The trustees shall serve without compensation, but they shall be reimbursed for all necessary expenses that they may incur through service on the board.

(6) Each trustee shall be entitled to one vote in the board. Six trustees must be present at any meeting of said board for the transaction of its business.

(7) Subject to the limitations of this act, the board of trustees shall annually establish rules and regulations for the administration of the funds created by this act and for the transaction of its business. Such rules and regulations shall be consistent with those adopted by the other pension funds within the Division of Pensions and Benefits in order to permit the most economical and uniform administration of all such retirement systems.

(8) The board of trustees shall elect from its membership a chairman. The Director of the Division of Pensions and Benefits shall appoint a qualified employee of the division to be secretary of the board. The administration of the program shall be performed by the personnel of the Division of Pensions and Benefits.

(9) The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. The retirement system shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

(10) The Attorney General of the State of New Jersey shall be the legal adviser of the retirement system, except that if the Attorney General determines that a conflict of interest would affect the ability of the Attorney General to represent the board on a matter affecting the retirement system, the board may select and employ legal counsel to advise and represent the board on that matter.

(11) The State Treasurer shall designate a medical board after consultation with the Director of the Division of Pensions and Benefits, subject to veto by the board of trustees for valid reason. It shall be composed of three physicians who are not eligible to participate in the retirement system. The medical board shall pass upon all medical examinations required under the provisions of this act, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the retirement system its conclusions and recommendations upon all matters referred to it.

(12) The actuary of the system shall be selected by the Retirement Systems Actuary Selection Committee established by P.L.1992, c.125. He shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this act, and shall perform such other duties as are required in connection therewith.

(13) At least once in each three-year period the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system and, with the advice of the actuary, the board of trustees shall adopt for the retirement system such mortality, service and other tables as shall be deemed necessary and shall certify the rates of contribution payable under the provisions of this act.

(14) (Deleted by amendment, P.L.1970, c.57.)

(15) On the basis of such tables recommended by the actuary as the board of trustees shall adopt and regular interest, the actuary shall make an annual valuation of the assets and liability of the funds of the system created by this act.

(16) (Deleted by amendment, P.L.1987, c.330.)

(17) (Each policeman or fireman member of the board of trustees shall be entitled to time off from his duty, with pay, during the periods of his attendance upon regular or special meetings of the board of trustees, and such time off shall include reasonable travel time required in connection therewith.

2. This act shall take effect immediately.

Approved August 29, 1995.

CHAPTER 239

AN ACT cancelling certain appropriations made from the "Pinelands Infrastructure Trust Fund," and reappropriating these moneys for new purposes.

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

1. a. The following portions of amounts heretofore appropriated by section 1 of P.L.1987, c.306 to the Department of Environmental Protection from the "Pinelands Infrastructure Trust Fund" created pursuant to section 14 of the "Pinelands Infrastructure Trust Bond Act of 1985," P.L.1985, c.302, for State grants and loans to local units for infrastructure capital projects are cancelled:

(1) The sum of $6,048,634 appropriated pursuant to subsection a. of section 1 of P.L.1987, c.306 for State grants to local units for infrastructure capital projects, due to (a) the cancellation of the following projects: the Waterford Municipal Utilities Authority, Sewage Treatment Plant; the Ocean County Utilities Authority, Ridgeway-Cabin Branch Interceptor; the Chesilhurst Borough, Interceptor; and the Chesilhurst Borough, Collection System; and (b) the availability of moneys resulting from final bid amounts being lower than the estimated costs for the following projects: the Atlantic County Utilities Authority, Coastal Interceptor; the Chesilhurst Borough, Collection System; and the Stafford Municipal Utilities Authority, Ocean Acres Skeleton System; and

(2) The sum of $3,024,318 appropriated pursuant to subsection b. of section 1 of P.L.1987, c.306 for State loans to local units for infrastructure capital projects, due to (a) the cancellation of the following projects: the Waterford Municipal Utilities Authority, Sewage Treatment Plant; the Ocean County Utilities Authority, Ridgeway-Cabin Branch Interceptor; the Chesilhurst Borough, Interceptor; and the Chesilhurst Borough, Collection System; and (b) the availability of moneys resulting from final bid amounts being lower than the estimated costs for the following projects: the Atlantic County Utilities Authority, Coastal Interceptor; the Chesilhurst Borough, Collection System; and the Stafford Municipal Utilities Authority, Ocean Acres Skeleton System.

b. (1) The sum of $6,048,634 appropriated pursuant to subsection a. of section 1 of P.L.1987, c.306 for State grants to local units for infrastructure capital projects shall revert to the "Pine-

lands Infrastructure Trust Fund," and may be appropriated therefrom for any purpose authorized under P.L.1985, c.302.

(2) The sum of $3,024,318 appropriated pursuant to subsection b. of section 1 of P.L.1987, c.306 for State loans to local units for infrastructure capital projects shall revert to the "Pinelands Infrastructure Trust Fund," and may be appropriated therefrom for any purpose authorized under P.L.1985, c.302.

2. There is appropriated to the Department of Environmental Protection from the "Pinelands Infrastructure Trust Fund" created pursuant to section 14 of the "Pinelands Infrastructure Trust Bond Act of 1985," P.L.1985, c.302, the sum of $9,072,952 to provide State grants and loans to local units in the pinelands area for infrastructure capital projects necessary to accommodate development in the regional growth areas in a manner consistent with the plan prepared pursuant to section 4 of P.L.1985, c.302. This sum shall be allocated as follows:

a. $6,048,634 for State grants to the following local units:

Local Unit	Amount of State Grant
Winslow Township, Route 73 Interceptor and Collection System	$3,990,182
Barnegat Township, Phase I Interceptor	1,158,400
Egg Harbor Township Municipal Utilities Authority, Collection System	403,741
Hamilton Township Municipal Utilities Authority, Collection System	496,311
Total	$6,048,634

b. $3,024,318 for State loans to the following local units:

Local Unit	Amount of State Loan
Winslow Township, Route 73 Interceptor and Collection System	$1,995,091
Barnegat Township, Phase I Interceptor	579,200
Egg Harbor Township Municipal Utilities Authority, Collection System	201,871
Hamilton Township Municipal Utilities Authority, Collection System	248,156
Total	$3,024,318

3. This act shall take effect immediately.

Approved August 29, 1995.

CHAPTER 240

AN ACT concerning pension funds of school district employees in first-class counties and amending and repealing various parts of the statutory law.

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

1. N.J.S.18A:66-104 is amended to read as follows:

Definition of "veteran."

18A:66-104. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any army, air force or navy of the allies of the United States in World War I, between July 14, 1914, and November 11, 1918, or who served in any army, air force or navy of the allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose his United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the board of trustees evidence of such record of service in form and content satisfactory to said board of trustees:

(a) The Indian wars and uprisings during any of the periods recognized by the war department of the United States as periods of active hostility;

(b) The Spanish-American war between April 20, 1898, and April 11, 1899;

(c) The Philippine insurrections and expeditions during the periods recognized by the war department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(d) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(e) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(f) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(g) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(h) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(i) World War I, between April 6, 1917, and November 11, 1918;

(j) World War II, between September 16, 1940, and September 2, 1945, who shall have served at least 90 days in such active service, exclusive of any period he was assigned (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of his civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies any part of which 90 days was served between said dates; provided, that any person receiving an actual service incurred injury or disability shall be classed as a veteran whether or not he has completed the 90-day service as herein provided;

(k) Korean conflict, on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period he was assigned (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of his civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service incurred injury or disability shall be classed as a veteran whether or not he has completed the 90-day service as herein provided; and provided further, that any member classed as a veteran pursuant to this subparagraph prior to August 1, 1966, shall continue to be classed as a veteran whether or not he completed the 90-day service between said dates as herein provided;

(l) Vietnam conflict, on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period he was assigned (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of his civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pur-

suant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual service incurred injury or disability shall be classed as a veteran whether or not he has completed the 90 days service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

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.

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.

3. N.J.S.18A:66-108 is amended to read as follows:

Salary deductions; death benefits.

18A:66-108. a. The board of trustees may, in the manner prescribed by the bylaws of the corporation, assess and collect monthly or semimonthly from each member of the pension fund the amount required to be paid by said member into the fund. All moneys so collected shall be paid to the treasurer of the corporation.

The board of trustees may make it a condition of membership that each member sign an order on the treasurer of school moneys, or other disbursing officer, directing the retention from his or her salary or wages of the amount of his or her assessments and the payment of the amount so retained directly to the treasurer of the corporation, and the treasurer of school moneys, or other disbursing officer, shall make such retention and payment, but such right of retention and payment shall become operative only in the event of the same being authorized by the bylaws of the corporation.

b. Whenever any member shall die in service or his or her employment be terminated, for reasons other than retirement, all

payments made by such employee to the fund shall be returned to the employee, if alive; or 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, together with simple interest at the rate of 4% per annum.

c. Upon the receipt of proper proof of the death of a member in service, on account of which no accidental death benefit is payable under subsection e. of this section or the death of a member who has been retired for disability but who has not yet attained 60 years of age, 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 and one-half times the compensation upon which his contributions are based or received by the member in the last year of creditable service; provided, however, that if such a member shall have attained 70 years of age or the member who has been retired for disability has attained 60 years of age, the amount payable shall equal three-sixteenths of the compensation received by the member in the last year of creditable service instead of one and one-half times such compensation. Such member may also file, and alter from time to time during his lifetime, as desired, a request with the board of trustees directing payment of said benefit in one sum or in equal installments over a period of years or as a life annuity. Upon the death of such member, a beneficiary to whom a benefit is payable in one sum may elect to receive the amount payable in equal annual installments over a period of years or as a life annuity.

d. Whenever any member who was a member on June 26, 1962, shall die after retirement on pension, not having received in pension payments an amount equal to the total amount of his or her contributions to the fund, including simple interest at 2% per annum, the difference between the amount so received and the amount of contributions, plus interest, shall be paid to the surviving named beneficiary on file with the board of trustees, and if none, then to his or her legal representative; unless said employee has made provision with the board of trustees for optional benefits under the provisions of section 18A:66-110.

e. Upon the death of a member in active service as a result of an accident in the performance of his or her duties as such employee and not as the result of his willful negligence, an accidental death benefit shall be payable, if a report, in a form acceptable to the board of trustees, of the accident is filed with

the pension fund within 60 days next following the accident and an application for such benefit is filed with the said board of trustees within two years of the date of the accident, but the board of trustees may waive such time limits for a reasonable period, if in the judgment of the board the circumstances warrant such action. Evidence must be submitted to the board of trustees proving that the natural and proximate cause of death was an accident arising out of and in the course of employment at some definite time and place. Upon application by or on behalf of the dependents of such deceased member, the board of trustees, in addition to the payment of his contributions, as provided in this section, shall grant a pension of one-half of the average annual salary received by him or her during the three years immediately preceding his or her death to the spouse of the deceased member or, if no surviving spouse, then to the child or children of such member under age 18, divided in such manner as the board in its discretion shall determine to continue until the youngest surviving child dies or attains age 18.

4. Section 10 of P.L.1983, c.216 (C.18A:66-109.1) is amended to read as follows:

C.18A:66-109.1 Loans from retirement system.

10. Any member who has at least three years of service to his credit for which he has contributed as a member may borrow from the retirement system an amount equal to not more than 50% of the amount of his accumulated deductions, but not less than $50.00; provided that the amount so borrowed, together with interest thereon, can be repaid by additional deductions from compensation, not in excess of 25% of the member's compensation, made at the same time compensation is paid to the member. The amount so borrowed, together with the interest at the rate of 7 1/2% per annum on any unpaid balance thereof, shall be repaid to the retirement system in equal installments by deduction from the compensation of the member at the time the compensation is paid or in such lump sum amount sufficient to repay the balance of the loan, but the rate at which any installment is deducted shall be at least equal to the member's rate of contribution to the retirement system and at least sufficient to repay the amount borrowed, with interest thereon. Not more than two loans may be granted to any member in any calendar year. Notwithstanding any other law affecting the salary or compensation of any person or persons to whom this act applies or shall apply, the additional deductions required to repay the loan shall be made.

Loans shall be made to a member from his accumulated deductions. The interest earned on those loans shall be treated in the same manner as interest earned from investments of the retirement system. In the case of any member who retires by reason other than disability and without repaying the full amount so borrowed, the pension fund shall retain the retirement benefit payments, excluding authorized deductions of the member, as repayment of the loan until the aggregate amount of those retirement benefit payments is equal to the outstanding balance of the loan, together with the interest at the rate of 7 1/2% per annum on the amount so borrowed, at which time the retired member shall receive his retirement benefit payments.

In the event a member retires by reason of disability without having repaid the full amount borrowed, then the retirement benefits to which he would otherwise be entitled shall be paid, less a deduction for the loan repayment. Subject to the approval of the board upon application by the retiree, the deduction from periodic benefits for a loan repayment may be reduced or otherwise adjusted, provided however that this deduction shall equal the lesser of the amount paid prior to the retirement or 20% of the periodic retirement benefit, whichever is less.

In the case of a pensioner who dies before the outstanding balance of the loan and interest thereon has been recovered, the remaining balance shall be repaid from the proceeds of any other benefits payable on the account of the pensioner, either in the form of monthly payments due to his beneficiaries or in the form of lump sum payments payable for pension or group life insurance.

5. 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-fiftieth of the average annual compensation received in any three years

of creditable service providing the largest possible benefit multiplied by the number of years 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-fiftieth 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-fiftieth 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.

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.

6. N.J.S.18A:66-113 is amended to read as follows:

Deferred retirement allowance.

18A:66-113. A member of the pension fund who has 10 years of service credit in the pension fund and who separates voluntarily or involuntarily before attaining the age of 60 years, and not by removal for cause on charges of misconduct or delinquency, may elect to receive a deferred retirement allowance beginning at the age of 60 years, equal to one-fiftieth of the average annual compensation received by him during any three years of creditable service providing the largest possible benefit multiplied by the number of years of credited service, with optional privileges as provided for in subsection d. of section 18A:66-110.

Such member shall advise the board of trustees of his election of such a deferred retirement allowance in writing, and shall complete such forms as shall be specified by the board of trustees in its administration of this section.

Subsequent to making such an election, but prior to attaining age 60, a member may later elect to withdraw all payments which

he has made to the pension fund together with simple interest at the rate of 4% per annum figured on such employee contributions. Upon such withdrawal of contributions, no further benefits shall be payable on behalf of said employee by the pension fund. If such a member should die before attaining the age of 60 years, all payments which he has made, together with simple interest at the rate of 4% per annum figured on such employee's contributions to the fund from the date of membership, 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.

Any member who, having elected to receive a deferred retirement allowance, again becomes an employee covered by the retirement system while under the age of 60 shall thereupon be reenrolled. He shall be credited with all service as a member standing to his credit at the time of his election to receive a deferred retirement allowance.

7. Section 4 of P.L.1971, c.382 (C.18A:66-113.1) is amended to read as follows:

C.18A:66-113.1 Early retirement.

4. Should a member resign after having established 25 years of creditable service before reaching age 60, he may elect "early retirement," provided that such election is communicated by such member to the retirement system by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof he desires to be retired. He shall receive in lieu of any other payment provided for in section 18A:66-113 retirement allowance of one-fiftieth of his average annual compensation received in any three years of creditable service providing the largest possible benefit for each year of service credited reduced by one-quarter of 1% for each month that the member lacks of being age 55.

8. N.J.S.18A:66-114 is amended to read as follows:

Public employee veterans, retirement benefits, certain.

18A:66-114. a. Any public employee veteran in office, position or employment with a board of education or a school district on June 26, 1962, who is or becomes a member of a pension fund established under article 16 of chapter 5 of Title 18 of the Revised Statutes or this article, and who is or who remains in

such service until he attains 60 years of age and who has or shall have been for 20 years in the aggregate in office, position or employment with this State or of a county, municipality, or school district or board of education, satisfactory evidence of which service has been presented to the board of trustees, shall have the privilege of retiring and of receiving annually from the fund, for and during the remainder of his life, by way of pension, one-half of the compensation which he received throughout his last year of employment, with the optional privileges provided in subsection d. of section 18A:66-110. "Last year of employment," as herein last used shall mean the 12-month period preceding the date of retirement, regardless of the date when such retirement occurs, provided the date of retirement is after June 26, 1962.

b. Any veteran who took or shall take office, position or employment with a board of education or a school district after June 26, 1962 and who shall become a member of the pension fund after such date, and who shall have attained 62 years of age and who shall present to the board of trustees satisfactory evidence of 20 years of aggregate service in office, position or employment with this State or with a county, municipality, or school district or board of education, shall have the privilege of retiring and of receiving annually from the fund, for and during the remainder of his life, by way of pension, one-half of the compensation which he received throughout his last year of employment upon which compensation he made contributions to the pension fund, with the optional privileges provided in subsection d. of section 18A:66-110.

c. Any public employee veteran member of the pension fund who had been for 20 years in the aggregate in office, position or employment with this State or with a county, municipality, or school district or board of education as of June 26, 1962 shall have the privilege of retiring for ordinary disability and of receiving a retirement allowance equal to one-half of the compensation which he received throughout his last year of employment upon which contributions to the pension fund are based, with the optional privileges provided in subsection d. of section 18A:66-110.

d. Any public employee veteran member who shall be in office, position or employment with a board of education or a school district and who shall have attained the age of 60 years of age and who has at least 30 years of aggregate service credit in such office, position or employment and who shall present to the board of trustees satisfactory evidence of at least 30 years of aggregate service in such office, position or employment, shall have the

privilege of retiring for service and receiving annually from the fund, for and during the remainder of his life, by way of pension, one-fiftieth of the highest year's compensation during employment, upon which compensation he made contributions to the pension fund, multiplied by the number of years of service with the optional privileges provided in subsection d. of N.J.S.18A:66-110.

9. N.J.S.18A:66-116 is amended to read as follows:

Exemptions.

18A:66-116. The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of this article, and the moneys in the various funds created under this article, shall be exempt from levy and sale, garnishment, attachment or any other process arising out of any State court and, except as otherwise provided, shall be unassignable.

Nothing in this section shall prohibit any person insured under a group insurance policy, pursuant to an arrangement among the insured, the group policyholder and the insurer, from making to any person other than his employer, a gift assignment of the rights and benefits conferred on him by any provision of such policy or by law including specifically, but not by way of limitation, the right to exercise the conversion privilege and the right to name a beneficiary. Any such assignment, whether made before or after the effective date of this act (P.L.1995, c.240), shall entitle the insurer to deal with the assignee as the owner of all rights and benefits conferred on the insured under the policy in accordance with the terms of the assignment.

10. Section 4 of P.L.1971, c.278 (C.18A:66-126.4) is amended to read as follows:

C.18A:66-126.4 Appropriations to pay increase.

4. The employer shall pay one-half the cost of the increase in the retirement allowances payable to retirants who retired from the employ of such employer. Certification of the amounts due shall be made by the board of trustees to each employer. Each employer shall appropriate the amounts so certified in the fiscal year next following its fiscal year in which such certification is made. Such amounts shall be paid by each employer to the retirement system. In making such certifications to employers in the years after 1970 the board of trustees shall take into account payments made by the

employer, payments to retirants of such employer and prospective payments to be made to such retirants in the following year.

The increase in retirement allowances provided for under this act shall commence provided, that there is appropriated the amount certified by the Director of the Division of Pensions of the State Department of the Treasury to the Director of the State Division of Budget and Accounting as set forth in the Pension Increase Act (P.L.1969, c.169). The increase in retirement allowances shall continue to be paid as long as there shall be appropriated the amounts so certified. In the event that the necessary funds are not so appropriated, the increase in retirement allowances shall cease; no further payments shall be made by other employers; refunds shall be made by the retirement system to all employers of any balances unexpended on their account.

11. Section 6 of P.L.1971, c.278 (C.18A:66-126.6) is amended to read as follows:

C.18A:66-126.6 Adjustment of retirement allowances.

6. On or before October 1, 1969 and by the same date in each subsequent year, the Director of the Division of Pensions of the State Department of the Treasury shall review the index and determine the percentum of change in the index from the retirement year index, pursuant to the provisions of the Pension Increase Act (P.L.1969, c.169). The percentage of adjustment in the retirement allowances shall be 60% of the percentum of change.

The director shall include amounts sufficient to adjust the retirement allowances or pensions payable to all eligible retirants by 60% of the percentum of change in the index as such retirement allowances or pensions may have been originally granted, or increased for certain retirants in accordance with the provisions of the Pension Increase Act (P.L.1969, c.169). The director shall notify the secretary of the retirement system of the percentage of adjustment for the applicable year.

The employer and the pension fund shall each pay one-half of the percentage of adjustment, provided however that if the percentage of adjustment from any one year to the next year is greater than ten percent, the amount paid by the pension fund with respect to that particular period shall be limited to five percent.

Adjustments by the pension fund in the retirement allowance shall only apply after the effective date of this act (P.L.1995, c.240) and there shall be no retroactive payments for adjustments.

In no instance shall the amount of the retirement allowance originally granted and payable to any retirant be reduced as a result of this adjustment.

For purposes of this section, a "retirant" shall include all retirants except those whose retirement allowances commenced within the two calendar years prior to the first of the month in which the adjustment is to become effective in any year.

Repealer.

12. N.J.S.18A:66-112 is repealed.

13. This act shall take effect immediately and shall be retroactive to January 1, 1995.

Approved August 29, 1995.

CHAPTER 241

AN ACT concerning wildlife conservation license plates and the conservation of marine mammals and marine reptiles, and amending and supplementing P.L.1993, c.119 (C.39:3-33.10).

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

C.39:3-33.11 Annual renewal fee; use.

1. The annual renewal fee for the registration certificate of a motor vehicle for which a wildlife conservation license plate has been issued shall include, in each year subsequent to the year of issuance, a wildlife conservation license plate renewal fee in the amount of $10, which shall be in addition to the fee for the renewal of the registration certificate, and which shall be collected by the Division of Motor Vehicles.

For each $10 wildlife conservation license plate renewal fee collected, the Division of Motor Vehicles shall deposit:

a. $3 thereof into a non-lapsing, interest-bearing "Marine Mammal Stranding Center Fund" to be established in the Department of the Treasury. Interest or other income earned on monies deposited into the Marine Mammal Stranding Center Fund shall be credited to the fund for use as set forth in this subsection for other monies in that fund. Monies in the Marine Mammal Stranding Center Fund shall be withdrawn by the State Treasurer and disbursed to the Marine Mammal Stranding Center in Brigantine, New Jersey, upon request of the center pursuant to a voucher system to be established by the State Treasurer. The center shall indicate on each voucher request the purpose to which the monies disbursed shall be applied. Monies disbursed from the fund to the center shall be utilized by the center in support of its work pertaining to the rescue, treatment, rehabilitation, and conservation of marine mammals and marine reptiles, and toward meeting the costs of related research and public education activities, and may be applied toward the costs of personnel and the purchase and maintenance of equipment and supplies for such purposes. The State Treasurer shall provide an annual report to the Marine Mammal Stranding Center on the status of the fund, and the center shall provide an annual report to the State Treasurer documenting expenditures by the center of monies from the fund; and

b. $7 thereof into the Wildlife Conservation Fund established pursuant to subsection b. of section 1 of P.L.1993, c.119 (C.39:3-33.10), of which:

(1) $5 shall be utilized by the Division of Fish, Game and Wildlife for the purpose only of funding research, information and data collection and dissemination, population and habitat studies, environmental education, and conservation activities pertaining to endangered and non-game wildlife, and which may include the funding of full-time or part-time personnel and the purchase and maintenance of equipment and supplies dedicated to that purpose; and

(2) $2 shall be made available to the Division of Fish, Game and Wildlife for the purpose only of providing funding grants to endangered and non-game wildlife conservation projects proposed by nonprofit organizations.

The Division of Fish, Game and Wildlife shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations which set forth the criteria for awarding grants pursuant to paragraph (2) of this subsection.

c. Any person whose application for issuance of a wildlife conservation license plate has been received by the State prior to the effective date of P.L.1995, c.241, or is received within 30

days thereafter, shall be permanently exempt from payment of the $10 annual wildlife conservation license plate renewal fee required pursuant to this section for that wildlife conservation license plate unless the person waives the exemption on a form therefor to be provided by the Division of Motor Vehicles at the time of renewal of the registration certificate for the motor vehicle.

2. Section 1 of P.L.1993, c.119 (C.39:3-33.10) is amended to read as follows:

C.39:3-33.10 Issuance of wildlife conservation license plates; establishment of "Wildlife Conservation Fund."

1. a. The Director of the Division of Motor Vehicles may issue for a motor vehicle owned or leased and registered in the State, wildlife conservation license plates bearing, in addition to the registration number and other markings or identification otherwise prescribed by law, words or a slogan and an emblem, to be designed by the Commissioner of Environmental Protection and approved by the Director of the Division of Motor Vehicles, indicating support for, or an interest in, wildlife conservation. Issuance of wildlife conservation license plates in accordance with this subsection shall be subject to the provisions of chapter 3 of Title 39 of the Revised Statutes, except as hereinafter otherwise specifically provided.

b. Application for issuance of a wildlife conservation license plate shall be made to the Director of the Division of Motor Vehicles on such forms and in such manner as may be prescribed by the director. In order to be deemed complete, an application shall be accompanied by a fee of $50, payable to the Director of the Division of Motor Vehicles. The $50 fee for a wildlife conservation license plate shall be in addition to the fees otherwise prescribed by law for the registration of motor vehicles. Monies collected from the fees for wildlife conservation license plates shall be deposited into a non-lapsing, interest-bearing "Wildlife Conservation Fund," which is herewith established in the Division of Fish, Game and Wildlife. Interest or other income earned on monies deposited into the Wildlife Conservation Fund shall be credited to the fund for use as set forth in this section for other monies in the fund.

c. Except as provided in section 1 of P.L.1995, c.240 (C.39:3-33.11), monies in the Wildlife Conservation Fund shall be utilized by the Division of Fish, Game and Wildlife: (1) to reimburse the Division of Motor Vehicles for all costs incurred by that division, as stipulated by the director of that division, in

producing, issuing, and publicizing the availability of wildlife conservation license plates; and (2) for endangered and nongame species conservation, including effectuating the purposes of "The Endangered and Nongame Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.). The Director of the Division of Motor Vehicles shall annually certify to the Director of the Division of Fish, Game and Wildlife the average cost per license plate incurred in the immediately preceding year by the Division of Motor Vehicles in producing, issuing, and publicizing the availability of wildlife conservation license plates.

d. The Director of the Division of Motor Vehicles shall notify eligible motorists of the opportunity to obtain wildlife conservation license plates by including a notice with all motor vehicle registration renewals, and by posting appropriate posters or signs in all division facilities and offices, as may be provided by the Division of Fish, Game and Wildlife. The notices, posters, and signs shall be designed by the Commissioner of Environmental Protection. The designs shall be subject to the approval of the Director of the Division of Motor Vehicles, and the Director of the Division of Fish, Game and Wildlife shall supply the Division of Motor Vehicles with the notices, posters, and signs to be circulated or posted by that division.

e. The directors of the Division of Fish, Game and Wildlife and the Division of Motor Vehicles shall develop and enter into an interagency memorandum of agreement setting forth the procedures to be followed by the two divisions in carrying out their respective responsibilities under this act.

3. This act shall take effect on the 90th day after enactment; however, the Commissioner of the Department of Environmental Protection, the State Treasurer and the Director of the Division of Motor Vehicles may take such action in advance of the effective date as may be necessary for the timely implementation of this act.

Approved August 29, 1995.

CHAPTER 242

AN ACT concerning orders issued in cases involving domestic violence and amending and supplementing P.L.1991, c.261.

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

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

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

13. a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the rules of court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

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

(2) The existence of immediate danger to person or property;

(3) The financial circumstances of the plaintiff and defendant;

(4) The best interests of the victim and any child;

(5) In determining custody and visitation the protection of the victim's safety; and

(6) The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this

act, no party shall be ordered to participate in mediation on the issue of custody or visitation.

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

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

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

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

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

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

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay

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

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

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

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

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

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook,

documentation of health insurance, an identification document, a key, and other personal effects.

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

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

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

(13) (Deleted by amendment, P.L.1995, c.242).

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

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

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

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

(18) An order requiring the defendant to undergo a psychiatric evaluation.

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the

appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

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

C.2C:25-28.1 In-house restraining order prohibited.

2. Notwithstanding any provision of P.L.1991, c.261 (C.2C:25-17 et seq.) to the contrary, no order issued by the Family Part of the Chancery Division of the Superior Court pursuant to section 12 or section 13 of P.L.1991, c.261 (C.2C:25-28 or 2C:25-29) regarding emergency, temporary or final relief shall include an in-house restraining order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises.

3. This act shall take effect immediately.

Approved September 1, 1995.

CHAPTER 243

AN ACT concerning the payment of Intoxicated Driver Resource Center fees and amending R.S.39:4-50.

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

1. R.S.39:4-50 is amended to read as follows:

Driving while intoxicated.

39:4-50. (a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his

custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood, shall be subject:

(1) For the first offense, to a fine of not less than $250.00 nor more than $400.00 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than six months nor more than one year.

(2) For a second violation, a person shall be subject to a fine of not less than $500.00 nor more than $1,000.00, and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director, consistent with subsection (b) of this section.

(3) For a third or subsequent violation, a person shall be subject to a fine of $1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the forfeiture, suspension or revocation of the driving privilege imposed by the court under this section shall commence immediately, run through the offender's seventeenth birthday and continue from that date for the period set by the court pursuant to paragraphs (1) through (3) of this subsection. A court that imposes a term of imprisonment under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the chief of the Intoxicated Driving Program Unit in the Department of Health; provided that for a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol education and highway safety, as prescribed by the Director of the Division of Motor Vehicles. The sentencing court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with Rule 7:8-2 of the Rules Governing the Courts of the State of New Jersey, or

R.S.39:5-22. Upon sentencing, the court shall forward to the Bureau of Alcohol Countermeasures within the Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of $100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving Programs Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the Director of the Division of Motor Vehicles. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the director, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The Director of the Division of Motor Vehicles shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to establish a program of alcohol education and highway safety, as prescribed by this act.

(e) Any person accused of a violation of this section who is liable to punishment imposed by this section as a second or subsequent offender shall be entitled to the same rights of discovery as allowed defendants pursuant to the Rules Governing Criminal Practice, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and Drug Abuse and the Division of Motor Vehicles, but subject to the

approval of the Division of Alcoholism and Drug Abuse, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving as community treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a certified alcoholism counselor or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Bureau of Alcohol Countermeasures. Upon attendance at an Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of $75.00 for the first offender program or a per diem fee of $100.00 for the second offender program, as appropriate. Any increases in the per diem fees after the first full year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The centers shall conduct a program of alcohol education and highway safety, as prescribed by the Director of the Division of Motor Vehicles.

The Commissioner of Health shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

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

Approved September 1, 1995.

CHAPTER 244

AN ACT concerning mortgage foreclosure, amending various sections of the New Jersey Statutes and supplementing Chapter 50 of Title 2A of the New Jersey Statutes.

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

C.2A:50-53 Short title.

1. This act shall be known and may be cited as the "Fair Foreclosure Act."

C.2A:50-54 Findings, declarations on payment of home mortgages.

2. The Legislature hereby finds and declares it to be the public policy of this State that homeowners should be given every opportunity to pay their home mortgages, and thus keep their homes; and that lenders will be benefited when residential mortgage debtors cure their defaults and return defaulted residential mortgage loans to performing status.

C.2A:50-55 Definitions.

3. As used in this act:

"Deed in lieu of foreclosure" means a voluntary, knowing and uncoerced conveyance by the residential mortgage debtor to the residential mortgage lender of all claim, interest and estate in the property subject to the mortgage. In order for a conveyance to be voluntary, the debtor shall have received notice of, and been fully apprised of the debtor's rights as specified in section 4 of this act. For purposes of this act, "voluntarily surrendered" has the same meaning as "deed in lieu of foreclosure."

"Immediate family" means the debtor, the debtor's spouse, or the mother, father, sister, brother or child of the debtor or debtor's spouse.

"Non-residential mortgage" means a mortgage, security interest or the like which is not a residential mortgage. If a mortgage document includes separate tracts or properties, those portions of the mortgage document covering the non-residential tracts or properties shall be a non-residential mortgage.

"Obligation" means a promissory note, bond or other similar evidence of a duty to pay.

"Office" means the Office of Foreclosure within the Administrative Office of the Courts.

"Residential mortgage" means a mortgage, security interest or the like, in which the security is a residential property such as a

house, real property or condominium, which is occupied, or is to be occupied, by the debtor, who is a natural person, or a member of the debtor's immediate family, as that person's residence. This act shall apply to all residential mortgages wherever made, which have as their security such a residence in the State of New Jersey, provided that the real property which is the subject of the mortgage shall not have more than four dwelling units, one of which shall be, or is planned to be, occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated.

"Residential mortgage debtor" or "debtor" means any person shown on the record of the residential mortgage lender as being obligated to pay the obligation secured by the residential mortgage.

"Residential mortgage lender" or "lender" means any person, corporation, or other entity which makes or holds a residential mortgage, and any person, corporation or other entity to which such residential mortgage is assigned.

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:

(1) the particular obligation or real estate security interest;

(2) the nature of the default claimed;

(3) the right of the debtor to cure the default as provided in section 5 of this act;

(4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;

(5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;

(6) that if the debtor does not cure the default by the date specified under paragraph (5) of this subsection c., the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;

(7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of this act, but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;

(8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in this act, subject to the mortgage documents;

(9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;

(10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking. This requirement may be satisfied by attaching a list of such programs promulgated by the commissioner; and

(11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

C.2A:50-57 Curing of default.

5. a. Notwithstanding the provisions of any other law to the contrary, as to any residential mortgage for which a notice of intention to foreclose is required to be given pursuant to section 4 of this act, whether or not such required notice was in fact given, the debtor, or anyone authorized to act on the debtor's behalf, shall have the right at any time, up to the entry of final judgment or the entry by the office or the court of an order of redemption pursuant to subsection g. of section 11 of this act, to cure the default, de-accelerate and reinstate the residential mortgage by tendering the amount or performance specified in subsection b. of this section. The payment or tender shall be made to the person designated in the notice pursuant to paragraph (5) of subsection c. of section 4 of this act. The debtor may exercise the right to cure a default as to a particular mortgage and reinstate that mortgage only once every 18 months, provided, however, that this limitation shall not apply if the mortgage debtor cures a default by the date specified in paragraph (5) of subsection c. of section 4 of this act. The 18-month time period shall run from the date of cure and reinstatement.

b. To cure a default under this section, a debtor shall:

(1) pay or tender to the person identified pursuant to paragraph (5) of subsection c. of section 4 of this act, in the form of cash, cashier's check, or certified check, all sums which would have been due in the absence of default, at the time of payment or tender;

(2) perform any other obligation which the debtor would have been bound to perform in the absence of the default or the exercise of an acceleration clause, if any;

(3) pay or tender court costs, if any, and attorneys' fees in an amount which shall not exceed the amount permitted under the Rules Governing the Courts of the State of New Jersey; and

(4) pay all contractual late charges, as provided for in the note or security agreement.

c. To cure a default under this section, a debtor shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default as provided for in this act.

d. Cure of a default reinstates the debtor to the same position as if the default had not occurred. It nullifies, as of the date of cure, any acceleration of any obligation under the mortgage, note or bond arising from the default.

e. If a default is cured prior to the filing of a foreclosure action, the lender shall not institute a foreclosure action for that default. If a default is cured after the filing of a foreclosure action, the lender shall give written notice of the cure to the court. Upon such notice, the court shall dismiss the action without prejudice.

f. The right to cure a default under this section is independent of any right of redemption or any other right or remedy under the common law, principles of equity, State or federal statute, or rule of court.

C.2A:50-58 Application for entry of final judgment; entry of order of redemption.

6. a. (1) If a plaintiff's action to foreclose a residential mortgage is uncontested, pursuant to R.4:64-1(a) of the Rules Governing the Courts of the State of New Jersey and the plaintiff chooses not to use the optional procedure for the disposition of foreclosed premises pursuant to section 11 of this act, a lender shall apply for entry of final judgment and provide the debtor with a notice, mailed at least 14 calendar days prior to the submission of proper proofs for entry of a foreclosure judgment, advising that, absent a response from the debtor pursuant to paragraph (2) of this subsection a., proper proofs will be submitted for entry of final judgment in the foreclosure action and that upon entry of final judgment, the debtor shall lose the right, provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

(2) A debtor may, no later than 10 days after receipt of the notice required pursuant to subsection a. of this section, mail to the lender a statement in which the debtor in good faith certifies as true that there is a reasonable likelihood that the debtor will be able to provide payment necessary to cure the default within 45 days of the

date the notice required pursuant to paragraph (1) of this subsection a. became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address of the lender who gave notice as required pursuant to subsection a. of this section.

(3) A lender who receives a statement sent by the debtor pursuant to paragraph (2) of this subsection a., shall not submit proper proofs for entry of final judgment in foreclosure with a return date earlier than 46 days after the date the notice required pursuant to paragraph (1) of this subsection a. became effective.

b. (1) If a plaintiff's action to foreclose a residential mortgage is uncontested, pursuant to R.4:64-1(a) of the Rules Governing the Courts of the State of New Jersey and the lender chooses to use the optional procedure for the disposition of the foreclosed premises pursuant to section 11 of this act, the lender shall provide the debtor with a notice, mailed at least 14 calendar days prior to filing an affidavit or certification with the office or court pursuant to subsection f. of section 11 of this act. The notice shall advise the debtor that, absent a response from the debtor pursuant to paragraph (2) of this subsection b., the lender shall file an affidavit or certification with the office or court requesting the office or court to enter an order of redemption and that upon the entry of the order of redemption the debtor shall lose the right provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

(2) A debtor may, no later than 10 days after receipt of the notice required pursuant to paragraph (1) of this subsection b., mail to the lender a statement in which the debtor in good faith certifies as true that there is a reasonable likelihood that the debtor will be able to provide payment necessary to cure the default within 45 days of the date the notice required pursuant to paragraph (1) of this subsection b. became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address of the lender who gave notice as required pursuant to paragraph (1) of this subsection b.

(3) A lender who receives a statement sent by the debtor pursuant to paragraph (2) of this subsection b., shall not file an affidavit or certification with the office or court earlier than 46 days after the date the notice required pursuant to paragraph (1) of this subsection b. became effective.

C.2A:50-59 Reinstatement of mortgage relationship.

7. If a debtor is successful in curing the default under a repayment plan approved by the United States Bankruptcy Court, the residential mortgage relationship between the parties is reinstated, and the debtor is restored to the same position held before the default or acceleration.

C.2A:50-60 Federal law not limited, modified.

8. Nothing herein is intended to limit or modify any provision of federal law regarding notice of the availability of homeownership counselling.

C.2A:50-61 Waivers against public policy, unlawful, void.

9. Waivers by the debtor of rights provided pursuant to this act are against public policy, unlawful, and void, unless given after default pursuant to a workout agreement in a separate written document signed by the debtor.

C.2A:50-62 Nonapplicability of act.

10. The provisions of sections 1 through 9 of this act shall not apply to the foreclosure of a non-residential mortgage nor to collection of the obligation by means other than enforcing the lender's lien on the residential property. A lender shall not be required to foreclose a residential mortgage and a non-residential mortgage securing the same obligation in the same proceeding.

C.2A:50-63 Optional foreclosure procedure.

11. a. An optional foreclosure procedure without sale for the disposition of a foreclosed premises is hereby established pursuant to subsection b. of this section, wherein a lender may elect to proceed according to the provisions of this act and R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey.

b. Use of the optional procedure without sale, as provided in this section, shall be permitted only when:

(1) the debtor has abandoned the property which is the subject of the residential mortgage;

(2) the debtor has voluntarily surrendered the property which is the subject of the residential mortgage by signing a deed in lieu of foreclosure in favor of the lender; or

(3) there is no equity in the property which is the subject of the residential mortgage, as defined in subsection e. of this section.

c. Pursuant to paragraph (1) of subsection b. of this section, and for purposes of this section only, abandonment of the prop-

erty subject to the residential mortgage shall be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, setting forth the specific facts upon which that conclusion is based. The affidavit or certification shall be submitted to the office or the court at the same time that the lender applies to the office or the court for the order fixing the amount, time and place for redemption.

d. Pursuant to paragraph (2) of subsection b. of this section and for purposes of this section only, if the lender receives a deed in lieu of foreclosure, the conveyance shall be effective only if the deed clearly and conspicuously provides: that the debtor may, without penalty, rescind the conveyance within seven days, excluding Saturdays, Sundays and legal holidays; and that such recision is effective upon delivery of a written notice to the lender or its agent or upon mailing of such notice to the lender or its agent by certified or registered mail, return receipt requested.

e. (1) For purposes of paragraph (3) of subsection b. of this section, a property subject to a residential mortgage shall be deemed to have no equity if the total unpaid balance of all liens and encumbrances against the property, including mortgages, tax liens and judgments actually against the property (not including similar name judgments), and any other lien, is equal to or greater than 92 percent of the fair market value of the property. An affidavit setting forth with specificity the fair market value of the property, the unpaid balance of the obligation, including all mortgages and liens and the method by which the lender determined that the property has no equity, shall be submitted to the office or the court at the time the lender applies for the order fixing the amount, time and place for redemption.

(2) If a lender proceeds with the optional procedure under this subsection, and if the debtor has not objected and requested a public sale pursuant to this section, when the foreclosed property is resold by the lender following judgment and provided the resale price received by the lender is in excess of the amount necessary to repay the debt, interest and reasonable costs of the lender, and all carrying charges, including, but not limited to, the reasonable costs of maintenance and resale, the lender shall deposit any such excess in accordance with R.4:57 et seq. of the Rules Governing the Courts of the State of New Jersey.

(3) Upon deposit of any such excess with the Superior Court, the lender shall notify the debtor and any lien holder who held a lien junior to the lender and whose lien was lost in whole or in

part as a result of the foreclosure. Such notification shall be by certified mail, return receipt requested, to the last known address of the debtor and such lien holders. The debtor and the lien holders shall then have six months to make an application to the Superior Court, in the form of an application for surplus funds, upon appropriate notice to all other parties in interest, to seek an order for turnover of the excess funds. Failure of a lender to comply with the provisions of paragraphs (2) and (3) of this subsection e. shall not affect title to the foreclosed property.

f. (1) In accordance with the provisions of R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey, and subject to compliance with the provisions of this act, a lender may elect to proceed with the optional procedure by filing an affidavit or certification with the office or the court.

(2) The affidavit or certification shall set forth the facts which the lender alleges show that it is entitled to proceed under one or more paragraphs of subsection b. of this section and shall be supported by the proofs required by this section and such other proofs as may be required by the office or the court.

g. In accordance with the provisions of R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey, and subject to compliance with the provisions of this act, the office or the court may enter an order fixing the amount, time, and place for redemption, which shall be not less than 45 days nor more than 60 days after the date of the order. The office or the court may grant an extension of time for good cause shown. The order shall provide that:

(1) the redeeming defendant pay to the plaintiff's attorney the amount fixed by the office or the court for redemption, together with interest to the date of redemption, plus all court costs;

(2) redemption shall be by cash, cashier's check or certified check and made at the office of the plaintiff's attorney, if such office is located in the county where the property is situated, or at such other place as designated by the office or the court, between the hours of 9:00 a.m. and 4:00 p.m. of the date set by the office or the court in the order; and

(3) in the absence of redemption, the defendants shall stand absolutely debarred and foreclosed from all equity of redemption.

h. (1) The order for redemption or notice thereof shall be mailed to each defendant's last known address and, if different, also to the address of the property being foreclosed. The order for redemption or notice thereof shall be sent by ordinary mail and certified mail, return receipt requested, within 20 days after the date the order is

entered, except that, as to defendants whose addresses are unknown and who were served by publication, no further publication of the order for redemption or notice thereof need be made.

(2) The notice shall:

(a) inform the defendants that the plaintiff is proceeding under an optional procedure authorized by section 11 of this act and set out the steps of the optional procedure;

(b) inform all defendants of the terms and conditions under which a defendant may request a public sale of the mortgaged premises pursuant to subsection i. of this section; and

(c) clearly state that no request for a public sale made after 30 days from the date of service will be granted, except for good cause shown.

i. In any matter in which the office or the court has issued an order for redemption and the lender is permitted to proceed by the optional procedure, a defendant who wishes to object to the optional procedure and request a public sale with respect to the mortgaged premises being foreclosed, shall submit to the office or the court a written request for a public sale within 30 days of the date the order or notice thereof is served. If a defendant requests a public sale within the required time period, and subject to compliance with the provisions of this act, the office or court shall enter a judgment of foreclosure which provides for a public sale of the premises in accordance with applicable law. Any such defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall be required to post a cash deposit or bond prior to the date fixed for redemption. This cash deposit or bond shall be in an amount which is 10% of the amount found due in the order fixing the amount, time and place for redemption and shall be held to secure the plaintiff against any additional interest and costs, as well as any deficiency, as a result of the public sale. The office or the court may dispense with this requirement for good cause shown. The defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall pay all expenses and costs associated with the public sale, including, but not limited to, all sheriff's fees and commissions.

j. In the event of any dispute among defendants over the right to redeem, the court shall enter such order as is necessary to secure the plaintiff pending the resolution of the dispute, including, but not limited to, payment of plaintiff's additional interest and costs which accrue as a result of the dispute.

k. Upon redemption, the plaintiff shall furnish the redemptioner with an appropriate certificate of redemption and the redemptioner shall acquire all rights provided by law and equity but shall not be entitled to a deed or title to the mortgaged premises solely by virtue of the redemption. A redemptioner in proper cases may proceed to foreclose the redemptioner's interest.

l. In the absence of redemption, and on proof of mailing of the order for redemption or notice thereof pursuant to subsection h. of this section and an affidavit of non-redemption, the plaintiff shall be entitled to a judgment debarring and foreclosing the equity of redemption of the defendants and each of them and any person claiming by, through or under them, and adjudging the plaintiff be vested with a valid and indefeasible estate in the mortgaged premises. Anything to the contrary notwithstanding, redemption shall be permitted at any time up until the entry of judgment including the whole of the last day upon which judgment is entered. A certified copy of the judgment shall be accepted for recording by the county recording officer pursuant to P.L.1939, c.170 (C.46:16-1.1).

m. Upon entry of a judgment vesting title in the plaintiff pursuant to subsection l. of this section, the debt which was secured by the foreclosed mortgage shall be deemed satisfied, and the plaintiff shall not be permitted to institute any further or contemporaneous action for the collection of the debt.

C.2A:50-64 Procedures for sale.

12. a. With respect to the sale of a mortgaged premises under foreclosure action, each sheriff in this State shall provide for, but not be limited to, the following uniform procedures:

(1) Bidding in the name of the assignee of the foreclosing plaintiff.

(2) That adjournment of the sale of the foreclosed property shall be in accordance with N.J.S.2A:17-36.

(3) (a) The sheriff shall schedule a sale date within 120 days of the sheriff's receipt of any writ of execution issued by the court in any foreclosure proceeding.

(b) If it becomes apparent that the sheriff cannot comply with the provisions of subparagraph (a) of this paragraph (3), the foreclosing plaintiff may apply to the office for an order appointing a Special Master to hold the foreclosure sale.

(c) Upon the foreclosing plaintiff making such application to the office, the office shall issue the appropriate order appointing a Special Master to hold the foreclosure sale.

(4) That the successful bidder at the sheriff's sale shall pay a 20 percent deposit in either cash or by a certified or cashier's check, made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff shall immediately void the sale and proceed further with the resale of the premises without the necessity of adjourning the sale, without renotification of any party to the foreclosure and without the republication of any sales notice. Upon such resale, the defaulting bidder shall be liable to the foreclosing plaintiff for any additional costs incurred by such default including, but not limited to, any difference between the amount bid by the defaulting bidder and the amount generated for the foreclosing plaintiff at the resale. In the event the plaintiff is the successful bidder at the resale, the plaintiff shall provide a credit for the fair market value of the property foreclosed.

(5) It is permissible, upon consent of the sheriff conducting the sheriff's sale, that it shall not be necessary for an attorney or representative of the person who initiated the foreclosure to be present physically at the sheriff's sale to make a bid. A letter containing bidding instructions may be sent to the sheriff in lieu of an appearance.

(6) That each sheriff's office shall use a deed which shall be in substantially the following form:

THIS INDENTURE,

made this_____ (date) day of _____ (month), _____ (year). Between _____ (name), Sheriff of the County of _____ (name) in the State of New Jersey, party of the first part and _____ (name(s)) party of the second part, witnesseth.

WHEREAS, on the_____ (date) day of _____ (month), _____ (year), a certain Writ of Execution was issued out of the Superior Court of New Jersey, Chancery Division- _____ (name) County, Docket No. _____ directed and delivered to the Sheriff of the said County of _____ (name) and which said Writ is in the words or to the effect following that is to say:

THE STATE OF NEW JERSEY to the Sheriff of the County of _____ (name),

Greeting:

WHEREAS, on the _____ (date) day of _____ (month), _____ (year), by a certain judgment made in our Superior Court of New Jersey, in a certain cause therein pending, wherein the PLAINTIFF is:

_____

_____

and the following named parties are the DEFENDANTS:

_____

_____

_____

IT WAS ORDERED AND ADJUDGED that certain mortgaged premises, with the appurtenances in the Complaint, and Amendment to Complaint, if any, in the said cause particularly set forth and described, that is to say: The mortgaged premises are described as set forth upon the RIDER ANNEXED HERETO AND MADE A PART HEREOF.

BEING KNOWN AS Tax Lot ___ (number) in Block _____ (number) COMMONLY KNOWN AS (street address)

_____.

TOGETHER, with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim and demand of the said defendants of, in, to and out of the same, to be sold, to pay and satisfy in the first place unto the plaintiff,

the sum of $ _____ (amount) being the principal, interest and advances secured by a certain mortgage dated _____ (date, month, year) and given by _____ (name)together with lawful interest from

until the same be paid and satisfied and also the costs of the aforesaid plaintiff with interest thereon.

AND for that purpose a Writ of Execution should issue, directed to the Sheriff of the County of _____ (name) commanding him to make sale as aforesaid; and that the surplus money arising from such sale, if any there be, should be brought into our said Court, as by the judgment remaining as of record in our said Superior Court of New Jersey, at Trenton, doth and more fully appear; and whereas, the costs and Attorney's fees of the said plaintiff have been duly taxed at the following sum: $_____ (amount)

THEREFORE, you are hereby commanded that you cause to be made of the premises aforesaid, by selling so much of the same as may be needful and necessary for the purpose, the said sum of $_____ (amount) and the same you do pay to the said plaintiff together with contract and lawful interest thereon as aforesaid, and the sum aforesaid of costs with interest thereon.

And that you have the surplus money, if any there be, before our said Superior Court of New Jersey, aforesaid at Trenton, within 30 days after pursuant to R.4:59-1(a), to abide the further Order of the said Court, according to judgment aforesaid, and you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you have executed this our Writ, together with this Writ, and if no sale, this Writ shall be returnable within 12 months.

WITNESS, the Honorable _____ (name), Judge of the Superior Court at Trenton, aforesaid, the _____ (date) day of _____ (month), _____ (year).

/s/ _____ (Clerk)
Superior Court of New Jersey

/s/_____
Attorney for Plaintiff

As by the record of said Writ of Execution in the Office of the Superior Court of New Jersey, at Trenton, in Book_____ (number) of Executions, Page _____ (number) etc., may more fully appear.

AND WHEREAS I, the said _____ (name), as such Sheriff as aforesaid did in due form of law, before making such sale

give notice of the time and place of such sale by public advertisement signed by myself, and set up in my office in the _____ (name) Building in _____ (name) County, being the County in which said real estate is situate and also set up at the premises to be sold at least three weeks next before the time appointed for such sale.

I also caused such notice to be published four times in two newspapers designated by me and printed and published in the said County, the County wherein the real estate sold is situate, the same being designated for the publication by the Laws of this State, and circulating in the neighborhood of said real estate, at least once a week during four consecutive calendar weeks. One of such newspapers, _____ (name of newspaper) is a newspaper with circulation in _____ (name of town), the County seat of said _____ (name) County. The first publication was at least twenty-one days prior and the last publication not more than eight days prior to the time appointed for the sale of such real estate, and by virtue of the said Writ of Execution, I did offer for sale said land and premises at public vendue at the County _____ (name) Building in _____ (name of town) on the _____ (date) day of _____, (month) _____ (year) at the hour of _____ (time) in the _____ (a.m. or p.m.).

WHEREUPON the said party of the second part bidding therefore for the same, the sum of $_____ (amount) and no other person bidding as much I did then and there openly and publicly in due form of law between the hours of ____ (time) and_____ (time) in the _____ (a.m. or p.m.), strike off and sell tracts or parcels of land and premises for the sum of $_____ (amount) to the said party of the second part being then and there the highest bidder for same. And on the _____ (date) of _____ (month) in the year last aforesaid I did truly report the said sale to the Superior Court of New Jersey, Chancery Division and no objection to the said sale having been made, and by Assignment of Bid filed with the Sheriff of _____ (name) County said bidder assigned its bid to:

_____

NOW, THEREFORE, This Indenture witnesseth, that I, the said _____ (name), as such Sheriff as aforesaid

under and by the virtue of the said Writ of Execution and in execution of the power and trust in me reposed and also for and in consideration of the said sum of $_____ (amount) therefrom acquit, exonerate and forever discharge to the said party of the second part, its successors and assigns, all and singular the said tract or parcel of lands and premises, with the appurtenances, privileges, and hereditaments thereunto belonging or in any way appertaining; to have and hold the same, unto the said party of the second part, its successors and assigns to its and their only proper use, benefit, and behoof forever, in as full, ample and beneficial manner as by virtue of said Writ of Execution I may, can or ought to convey the same.

And, I, the said _____ (name), do hereby covenant, promise and agree, to and with the said party of the second part, its successors and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done any act, matter or thing whereby the said premises, or any part thereof, with the appurtenances, are or may be charged or encumbered in estate, title or otherwise.

IN WITNESS WHEREOF, I the said _____ (name) as such Sheriff as aforesaid, have hereunto set my hand and seal the day and year aforesaid.

Signed, sealed and delivered
in the presence of

_____
Attorney at Law of New Jersey
Assistant County Counsel

_____(name) Sheriff

STATE OF NEW JERSEY) SS.
_____(county)

I, _____ (name), Sheriff, of the County of _____ (name), do solemnly swear that the real estate described in this deed made to

_____

was by me sold by virtue of a good and subsisting execution (or as the case may be) as is therein recited, that the money ordered to be made has not been to my knowledge or belief paid or satisfied, that the time and place of the same of said real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained and the true consideration for this conveyance as set forth in the deed is $ _____(amount).

_____
(name), Sheriff

Sworn before me, _____ (name), on this _____ (date) day of _____ (month), _____ (year), and I having examined the deed above mentioned do approve the same and order it to be recorded as a good and sufficient conveyance of the real estate therein described.

_____
Attorney or Notary Public

STATE OF NEW JERSEY) ss.
_____(Name) County)

On this_____ (date) day of _____ (month), _____ (year), before me, the subscriber, _____(name) personally appeared _____ (name), Sheriff of the County of _____ (name) aforesaid, who is, I am satisfied, the grantor in the within Indenture named, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same on his voluntary act and deed, for the uses and purposes therein expressed.

_____
Attorney or Notary Public

b. At the conclusion of the sheriff's sale, the attorney for the plaintiff may prepare and deliver to the sheriff a deed in the form provided pursuant to paragraph (5) of subsection a. of this section for the sheriff's execution and the deed shall be delivered to the sheriff within 10 days of the date of the sale. The sheriff shall be entitled to the authorized fee, as a review fee, even if the plaintiff's attorney prepares the deed.

c. The sheriff's office shall, within two weeks of the date of the sale, deliver a fully executed deed to the successful bidder at

the sale provided that the bidder pays the balance of the monies due to the Sheriff by either cash or certified or cashier's check. In the event a bid is satisfied after the expiration and additional interest is collected from the successful bidder, the sheriff shall remit to the plaintiff the total amount, less any fees, costs and commissions due the sheriff, along with the additional interest.

C.2A:50-65 Provision of judgment creditor's address for service.

13. Any judgment creditor shall, upon entry of judgment in the office of the Clerk of the Superior Court, provide the court with its current address for service. If the judgment creditor's address for service changes, it shall be incumbent upon the judgment creditor to effect a change of address for service by filing an appropriate form with the court in a timely manner. If any judgment creditor fails to provide the court with a current or change of address for service, in any foreclosure proceeding, the plaintiff may, without having to first make a more diligent inquiry or publish notice in a newspaper, serve the judgment creditor by ordinary mail and certified mail at the address that is reflected in the records of the Clerk of the Superior Court. The judgment creditor shall, if known, provide the Clerk of the Court with the judgment debtor's social security number or taxpayer identification number.

14. N.J.S.2A:17-36 is amended to read as follows:

Adjournments of sale of real estate.

2A:17-36. Adjournments of sale of real estate. A sheriff or other officer selling real estate by virtue of an execution may make two adjournments of the sale, and no more, to any time, not exceeding 14 calendar days for each adjournment. However, a court of competent jurisdiction may, for cause, order further adjournments.

C.2A:50-66 Letter in lieu of appearance by Attorney General.

15. a. The United States Attorney for the District of New Jersey may send a letter to the Clerk of the Superior Court of New Jersey which notes the appearance of the Attorney General of the United States and states that neither an answer will be filed nor a default opposed. This letter shall be accepted by the Clerk of the Superior Court of New Jersey in lieu of an appearance by the Attorney General of the United States. The acceptance by the Clerk shall allow the foreclosing plaintiff to proceed as if the United States had filed a non-contesting answer.

b. The Attorney General of New Jersey may send a letter to the Clerk of the Superior Court of New Jersey which notes the appearance of the Attorney General of New Jersey and states that neither an answer will be filed nor a default opposed. This letter shall be accepted by the Clerk of the Superior Court of New Jersey in lieu of an appearance by the Attorney General of New Jersey. The acceptance by the Clerk shall allow the foreclosing plaintiff to proceed as if the State of New Jersey had filed a non-contesting answer.

16. N.J.S.2A:15-11 is amended to read as follows:

Notice of lis pendens.

2A:15-11. Notice of lis pendens. No notice of lis pendens shall be effective after five years from the date of its filing.

C.2A:50-67 Partial payment.

17. In the absence of an express agreement between the parties to the contrary, a debtor may tender, and a lender may accept, partial payment of any sum owing and due without either party waiving any rights.

C.2A:50-68 Regulations.

18. The Attorney General, in consultation with the Commissioner of Banking, shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14A-1 et seq.) necessary to implement this act, including, but not limited to, regulations governing the form and content of notices of intention to foreclose.

19. This act shall take effect on the 90th day after enactment and shall apply to foreclosure actions commenced on or after the effective date.

Approved September 5, 1995.

CHAPTER 245

AN ACT modifying the allocation of taxable income under the corporation business tax, amending P.L.1945, c.162.

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

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

C.54:10A-6 Allocation factor.

6. In the case of a taxpayer which maintains a regular place of business outside this State other than a statutory office, the portion of its entire net worth to be used as a measure of the tax imposed by section 5(a) of this act, and the portion of its entire net income to be used as a measure of the tax imposed by section 5(c) of this act, shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, except as the director may determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that is:

(A) The property fraction is the average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value.

(B) The sales fraction is the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes, arising during such period from

(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,

(3) (Deleted by amendment.)

(4) services performed within the State,

(5) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(6) all other business receipts (excluding dividends excluded from entire net income by paragraph (1) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

divided by the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible

personal property, services, rentals, royalties and all other business receipts, whether within or without the State.

For the purposes of this section, receipts shall not include any sum or sums of money received in payment for gas or electric energy sold to a public utility subject to taxation pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) for resale to ratepayers of the public utility.

(C) The payroll fraction is the total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.

In the case of a taxpayer which does not maintain a regular place of business outside this State other than a statutory office, the allocation factor shall be 100%.

In the case of a banking corporation which maintains a regular place of business outside this State other than a statutory office, and which elects to take the exclusion from net worth provided in subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from entire net income provided in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall be computed and applied in accordance with section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that the numerators and the denominators of the fractions described in (A), (B) or (C) above shall include all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are otherwise attributable to this State.

2. This act shall take effect immediately and apply to fiscal or calendar accounting years beginning on or after July 1, 1996.

Approved September 11, 1995.

CHAPTER 246

AN ACT providing a reduced corporation business tax rate for certain lower income corporations, amending P.L.1945, c.162.

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

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

C.54:10A-5 Franchise tax.

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

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

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

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

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

December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of $100,000 or less for a privilege period the rate for that privilege period shall be 7 1/2%.

(2) For a taxpayer that is a New Jersey S corporation, the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the privilege period from the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

(3) For a taxpayer that is a New Jersey S corporation, the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period multiplied by its entire net income that is subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

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

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

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

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

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

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

2. This act shall take effect immediately and apply to privilege periods beginning on or after July 1, 1996.

Approved September 11, 1995.

CHAPTER 247

AN ACT establishing the Legislative Initiative Municipal Block Grant Program, 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-181.1 Legislative Initiative Municipal Block Grant Program.

1. There shall be appropriated annually by the Legislature for each State fiscal year an amount not less than $33,000,000 for the Legislative Initiative Municipal Block Grant Program. The amount appropriated shall be distributed to municipalities on or before September 1 of the State fiscal year in proportion to the number of residents of each municipality as determined pursuant to the most recent federal decennial census. The payment of Legislative Initiative Municipal Block Grant Program aid shall be used solely and exclusively by each municipality for the purpose of reducing the amount the municipality is required to raise by local property tax levy for municipal purposes. If the amount of the payment exceeds the amount required to be raised by local property tax levy for municipal purposes, the balance of the payment shall be used to reduce the amount the municipality is required to collect for county purposes, notwithstanding the provisions of this or any other law to the contrary. The Director of the Division of Local Government Services in the Department of Community Affairs shall certify annually that each municipality has complied with the requirements set forth herein.

2. This act shall take effect immediately.

Approved September 12, 1995.

CHAPTER 248

AN ACT appropriating funds from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund established pursuant to P.L.1994, c.108.

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

1. a. There is appropriated to the Department of Human Services from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund cre-

ated by the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994," P.L.1994, c.108, the sum of $22,200,000 for the following community-based projects:

Grants, including grants that create revolving funds, for the Division of Developmental Disabilities	$10,650,000
Grants, including grants that create revolving funds, for the Division of Mental Health Services	5,500,000
Grants, including grants that create revolving funds, for the Division of Youth and Family Services	3,100,000
Grants, including grants that create revolving funds, for the Division of Juvenile Services	900,000
Grants, including grants that create revolving funds, for the Commission for the Blind and Visually Impaired	50,000
Grants, including grants that create revolving funds, for Department of Human Services housing innovation and other capital projects	2,000,000

b. Of the funds appropriated in subsection a. of this section for the Division of Developmental Disabilities, $10,000,000 shall be used for projects to reduce the division's community services waiting list. The $10,000,000 represents a portion of the $80,000,000 to be expended on projects intended to reduce the community services waiting list. Of the funds appropriated in subsection a. of this section for the Division of Youth and Family Services, $200,000 shall be used for domestic violence projects.

c. Prior to the formal awarding of any funds appropriated pursuant to this section, the Commissioner of Human Services shall provide the Joint Budget Oversight Committee, or its successor, information as to the agency that will receive the funds, the amount of funds the agency is to receive, the manner in which the funds are to be used and the estimated amount of State funds required to operate the program. Unless the Joint Budget Over-

sight Committee, or its successor, formally notifies the Commissioner of Human Services within 10 working days that it does not approve of the specific project, the department may award the funds. The provisions of this subsection shall not apply to funds for renovations that do not increase the capacity of a facility, for emergency repairs and for life-safety and accreditation improvements to existing facilities.

2. The Commissioner of Human Services, consistent with the 1994 Bond Issue Master Plan, may provide grants to the New Jersey Housing and Mortgage Finance Agency, the New Jersey Health Care Facilities Financing Authority, the New Jersey Economic Development Authority and other similar agencies established by the State, or to private, nonprofit entities. These agencies or entities may leverage the grants, use equity contributions and take advantage of other financial mechanisms and create revolving funds for community capital projects. An applicant applying for funds from these agencies may be assessed an application fee consistent with the normal business practice of the agency. The plan for the establishment of the revolving fund shall be reviewed and approved by the Joint Budget Oversight Committee pursuant to the provisions of subsection c. of section 1 of this act.

a. An application fee or equity contribution shall not be required for renovations that do not increase the capacity of a facility, for emergency repairs or for life-safety and accreditation improvements to existing facilities. The application fee and any equity contribution may be waived, with the approval of the Commissioner of Human Services, if an applicant is able to document a financial inability to pay the fee or make an equity contribution.

b. An application fee or equity contribution that is required of an applicant shall be an unallowable item of cost for purposes of the most recent Department of Human Services' Contract Reimbursement Manual.

c. Grants provided to the New Jersey Housing and Mortgage Finance Agency, the New Jersey Health Care Facilities Financing Authority, the New Jersey Economic Development Authority and other similar agencies established by the State shall be exempt from the application fee and equity contribution.

d. As a condition of receiving monies from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund, an applicant shall apply for all applicable grants, loans, mortgages and tax credits that may be available

through governmental and non-governmental entities for financing the cost of the project or to reduce the total cost of the project. An applicant shall document to the department that it has or is in the process of applying for such grants, loans, mortgages and tax credits.

In the case of any loans or mortgages for which the applicant may apply, the department shall review the terms and conditions of the loan or mortgage recommended by the lending agency to determine if the total cost of the loan or mortgage exceeds direct State financing of the project if the applicant applies to the department for a contract to provide services and seeks to obtain reimbursement for such loans or mortgages. Costs in excess of what the State would incur shall be an unallowable cost for purposes of the most recent Department of Human Services' Contract Reimbursement Manual.

e. The provisions of this section shall not apply to appropriations made for institutional projects pursuant to section 3 of this bill.

3. There is appropriated to the Department of Human Services from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund created by the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994," P.L.1994, c.108, the sum of $30,000,000 for the following institutional projects:

Division of Developmental Disabilities:	
Life safety improvements	$6,700,000
Toxic and hazardous substance abatement	600,000
Infrastructure improvements	2,500,000
Division of Mental Health Services:	
Life safety improvements	1,400,000
Environmental protection projects	710,000
Infrastructure improvements	12,665,000
Client environment improvements	925,000
Division of Youth and Family Services:	
Life safety improvements	50,000
Environmental protection projects	50,000
Infrastructure improvements	543,000
Contingency fund	357,000
Division of Juvenile Services:	
Life safety improvements	900,000
Infrastructure improvements	100,000

Commission for the Blind and Visually Impaired:	
Infrastructure improvements - Kohn Center	500,000
Department of Human Services:	
Contingency fund	2,000,000

4. With respect to any human services facility to be erected or constructed from the funds appropriated pursuant to section 3 of this act, if the board, body or person authorized by law to award contracts for the work on the institutional projects, or the person authorized by law to award contracts for the work on the project finds that the building or project:

a. requires a unique application of specialized planning, management and operational strategies, skills and techniques, and

b. requires that construction management personnel, engineers, architects and contractors whose skills and expertise will ensure the completion of the building or project in the most efficient and timely manner be employed for its planning, design and construction; the board, body or person authorized by law to award the contracts may, by advertising and receiving bids in the form of a single contract, multiple branch contracts, or both, award the contract to the lowest responsible bidder or bidders, as determined by the board, body or person. The bid shall state the names of and evidence of performance security from, all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work and of the steam and hot water heating and ventilating apparatus, steam power plants and kindred work and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with Title 52 of the Revised Statutes.

5. The Director of the Division of Budget and Accounting in the Department of the Treasury shall make those corrections in the title or text, or both, of any appropriation item authorized under this act necessary to make the appropriation available for the purposes for which it was intended. The corrections shall be made by a written ruling which shall set forth an explanation of the need for correction and which shall be signed by the Director of the Division of Budget and Accounting and shall be filed by the director in his office as an official record. Any action pursuant to that ruling, including disbursement and the audit thereof, shall be legally binding and of full effect. An official copy of

each written ruling shall be transmitted to the Legislative Budget and Finance Officer upon the effective date of the ruling.

6. The Director of the Division of Budget and Accounting may approve expenditures for predesign program planning and other related costs for capital projects authorized under this act.

7. In order to provide flexibility in administering the provisions of this act, the Commissioner of Human Services may apply to the Director of the Division of Budget and Accounting for permission to transfer a part of any item or appropriation to any other item or appropriation within the respective department accounts. The transfer shall be made upon the written approval of the director and of the Joint Budget Oversight Committee, or its successor.

8. The Commissioner of Human Services shall report to the Joint Budget Oversight Committee or its successor on the status of the appropriation provided in this act six months from the effective date of this act and annually thereafter until all of the funds have been expended. The status report shall specify the projects that are funded and the amounts of funds appropriated, obligated and expended for each project. The status report shall also include information on the revolving funds established pursuant to section 2 of this act.

9. This act shall take effect immediately.

Approved September 12, 1995.

CHAPTER 249

AN ACT concerning notice requirements for certain amendments to a zoning ordinance and amending and supplementing P.L.1975, c.291.

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

1. Section 50 of P.L.1975, c.291 (C.40:55D-63) is amended to read as follows:

C.40:55D-63 Notice and protest.

50. Notice and Protest. Notice of the hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the planning board pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), shall be given prior to adoption in accordance with the provisions of section 2 of P.L.1995, c.249 (C.40:55D-62.1). A protest against any proposed amendment or revision of a zoning ordinance may be filed with the municipal clerk, signed by the owners of 20% or more of the area either (1) of the lots or land included in such proposed change, or (2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of two-thirds of all the members of the governing body of the municipality.

C.40:55D-62.1 Notice of hearing on amendment to zoning ordinance.

2. Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the planning board pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property as shown on the current tax duplicates, located, in the case of a classification change, within the district and within the State within 200 feet in all directions of the boundaries of the district, and located, in the case of a boundary change, in the State within 200 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.

A notice pursuant to this section shall state the date, time and place of the hearing, the nature of the matter to be considered and an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks, and by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office.

Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by

certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the boundaries of the district which is the subject of the hearing, may be made in the same manner as to a corporation, in addition to notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

The municipal clerk shall execute affidavits of proof of service of the notices required by this section, and shall keep the affidavits on file along with the proof of publication of the notice of the required public hearing on the proposed zoning ordinance change. Costs of the notice provision shall be the responsibility of the proponent of the amendment.

3. This act shall take effect immediately.

Approved September 12, 1995.

CHAPTER 250

AN ACT concerning the forfeiture of public office or employment and amending N.J.S.2C:51-2.

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

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

Forfeiture of public office.

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

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

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

(3) The Constitution or a statute other than the code so provides.

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

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

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

c. No court shall grant a stay of an order of forfeiture pending appeal of a conviction or forfeiture order unless the court is clearly convinced that there is a substantial likelihood of success on the merits. If the conviction be reversed or the order of forfeiture be overturned, he shall be restored, if feasible, to his office, position or employment with all the rights, emoluments and salary thereof from the date of forfeiture.

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

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

e. Any forfeiture or disqualification under subsection a., b. or d. which is based upon a conviction of a disorderly persons or

petty disorderly persons offense may be waived by the court upon application of the county prosecutor or the Attorney General and for good cause shown.

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

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

g. In any case in which the issue of forfeiture is not raised in a court of this State at the time of a finding of guilt, entry of guilty plea or sentencing, a forfeiture of public office, position or employment required by this section may be ordered by a court of this State upon application of the county prosecutor or the Attorney General or upon application of the public officer or public entity having authority to remove the person convicted from his public office, position or employment. The fact that a court has declined to order forfeiture shall not preclude the public officer or public entity having authority to remove the person convicted from seeking to remove or suspend the person from his office, position or employment on the ground that the conduct giving rise to the conviction demonstrates that the person is unfit to hold the office, position or employment.

2. This act shall take effect immediately.

Approved September 12, 1995.

CHAPTER 251

AN ACT concerning acts of graffiti, amending N.J.S.2C:17-3, P.L.1981, c.282, and P.L.1983, c.333 and supplementing chapter 4A of Title 2A of the New Jersey Statutes and chapter 33 of Title 2C of the New Jersey Statutes.

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

1. N.J.S.2C:17-3 is amended to read as follows:

Criminal mischief.

2C:17-3. Criminal Mischief. a. Offense defined. A person is guilty of criminal mischief if he:

(1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means listed in subsection a. of N.J.S.2C:17-2; or

(2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property.

b. Grading. (1) Criminal mischief is a crime of the third degree if the actor purposely causes pecuniary loss of $2,000.00 or more, or a substantial interruption or impairment of public communication, transportation (including, but not limited to, the defacement, injury or removal of an official traffic sign or signal), supply of water, gas or power, or other public service.

(2) Criminal mischief is a crime of the fourth degree if the actor causes pecuniary loss in excess of $500.00 but less than $2,000.00, or a disorderly persons offense if he causes pecuniary loss of $500.00 or less.

(3) Criminal mischief is a crime of the third degree if the actor damages, defaces, eradicates, alters, receives, releases or causes the loss of any research property used by the research facility, or otherwise causes physical disruption to the functioning of the research facility.

The term "physical disruption" does not include any lawful activity that results from public, governmental, or research facility employee reaction to the disclosure of information about the research facility.

c. A person convicted of an offense of criminal mischief 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.

d. As used in this section:

(1) "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.

(2) "Spray paint" means any paint or pigmented substance that is in an aerosol or similar spray container.

2. Section 1 of P.L.1981, c.282 (C.2C:33-10) is amended to read as follows:

C.2C:33-10 Causing fear of unlawful bodily violence, crime of third degree; act of graffiti, additional penalty.

1. A person is guilty of a crime of the third degree if he purposely, knowingly or recklessly puts or attempts to put another in fear of bodily violence by placing on private property of another a symbol, an object, a characterization, an appellation or graffiti that exposes another to threats of violence. A person shall not be guilty of an attempt unless his actions cause a serious and imminent likelihood of causing fear of unlawful bodily violence.

A person convicted of an offense under this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required either to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti or 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 nor less than the number of days necessary to remove the graffiti from the property.

3. Section 2 of P.L.1981, c.282 (C.2C:33-11) is amended to read as follows:

C.2C:33-11 Defacement of private property, crime of fourth degree; act of graffiti, additional penalty.

2. A person is guilty of a crime of the fourth degree if he purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons for purpose of exercising any right guar-

anteed by law or by the Constitution of this State or of the United States by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence.

A person convicted of an offense under this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required either to pay to the owner of the damaged property monetary restitution in the amount of pecuniary damage caused by the act of graffiti or 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.

4. Section 6 of P.L.1983, c.333 (C.52:17B-156) is amended to read as follows:

C.52:17B-156 Powers.

6. The commission shall be empowered to:

a. Solicit and receive gifts, bequests, donations and grant aid from any source whatsoever. These funds shall be used for the purpose of educating the general public in New Jersey regarding the State's criminal statutes and the consequences of committing acts in the State. Such contributions, gifts, bequests, donations, or grant aid shall be used exclusively for public purposes;

b. Advertise the consequences of participating in criminal activity in any media the commission deems appropriate, including but not limited to television, radio, newspaper, billboards, or printed material;

c. Educate the general public in New Jersey regarding the State's criminal statutes and the consequences of committing criminal acts in the State. The commission shall educate the general public regarding the State's mandatory sentencing laws, and particularly the mandatory sentencing law providing mandatory and extended terms of imprisonment for persons convicted of committing certain crimes while in possession of a firearm. In addition, the commission shall educate the general public on the laws imposing a driver's license suspension for juveniles, and imposing restitution or community service upon adults and juveniles, for acts of graffiti committed as part of the offenses of criminal mischief (N.J.S.2C:17-3), attempting to put another in fear of bodily violence (section 1 of P.L.1981, c.282 (C.2C:33-10)), or defacement of private property (section 2 of P.L.1981, c.282 (C.2C:33-11));

d. Enter into such contracts with a person upon such terms and conditions as the commission shall determine to be reasonable, employ such staff and do any and all things the commission deems necessary, to carry out the purposes and to exercise the powers given and granted in this act;

e. Establish a nonprofit, charitable, educational corporation under the laws of the State of New Jersey which shall be empowered to exercise the powers given and granted to the commission in the preceding subsections of this section to carry out the purposes of this act. Any such nonprofit corporation established by the commission shall be organized and operated exclusively for educational or other charitable purposes; no part of the net earnings of which shall inure to the benefit of any private shareholder or individual upon the liquidation or dissolution of the corporation for any cause whatsoever, neither the property of the corporation nor any right therein shall inure to the benefit of any of the directors, officers, or any other private individual but all property or rights therein, or the proceeds thereof, shall be fully disposed of by the board of directors to such one or more organizations which then qualify as organizations described in section 501 (c) (3) of the Internal Revenue Code of 1954 or the corresponding provisions of any subsequent law or to a governmental unit as the board of directors may select; no substantial part of the activities of which shall be carrying on propaganda, or otherwise attempting to influence legislation; and any such nonprofit corporation established hereunder shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

C.2A:4A-43.2 Additional penalty for juvenile adjudicated delinquent.

5. In addition to any other penalty imposed by the court, any juvenile adjudicated delinquent for an offense which, if committed by an adult, would constitute criminal mischief pursuant to N.J.S.2C:17-3, attempting to put another in fear of bodily violence pursuant to section 1 of P.L.1981, c.282 (C.2C:33-10), or defacement of private property pursuant to section 2 of P.L.1981, c.282 (C.2C:33-11), involving an act of graffiti, may be required either to pay to the owner of the damaged property monetary restitution in the amount of pecuniary damage caused by the act of graffiti or 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.

C.2A:4A-43.3 Suspension, postponement of right to operate motor vehicle.

6. Instead of or in addition to any other disposition ordered by the court under section 24 of P.L.1982, c.77 (C.2A:4A-43) for an initial act of graffiti committed by a person at least 13 and under 18 years of age, the court, considering the factors provided in paragraph (17) of subsection b. of section 24 of P.L.1983, c.77 (C.2A:4A-43), may suspend or postpone for one year that person's right to operate a motor vehicle including a motorized bicycle. In the case of a person who at the time of the imposition of sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period of one year after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this section, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

A second or subsequent offense may result in the suspension or postponement of the person's right to operate a motor vehicle for two years. If a second or subsequent offense occurs during a period when the person has had this right suspended or postponed, the person's right to operate a motor vehicle may be suspended or postponed for an additional two years to run consecutively.

The court before whom any person is convicted of or adjudicated delinquent for a violation shall collect forthwith the New Jersey driver's license or licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period

of license suspension or postponement imposed pursuant to this section the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privileges in this State.

C.2C:33-24 Definitions.

7. As used in this chapter:

a. "Act of graffiti" means the drawing, painting or making any mark or inscription on public or private real or personal property without the permission of the owner.

b. "Spray paint" means any paint or pigmented substance that is in an aerosol or similar spray container.

C.2C:33-25 Warning sign required for sale of spray paint; violations, penalties.

8. No person shall knowingly sell or offer for sale to the general public any spray paint unless a sign is exhibited, either where the product is displayed or where it is paid for, warning that in New Jersey an act of graffiti committed by a juvenile may carry a penalty of a one-year driver's license suspension for a first offense and a two-year suspension for a second offense, and that an act of graffiti committed by either an adult or a juvenile may carry a penalty of restitution or 20 days' community service.

A person who knowingly violates this section shall be fined $50 for the first offense and $100 for a second or subsequent offense.

9. This act shall take effect on the 91st day after enactment.

Approved September 12, 1995.

CHAPTER 252

AN ACT providing for the issuance of Battleship U.S.S. New Jersey license plates and supplementing chapter 3 of Title 39 of the Revised Statutes.

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

C.39:3-27.67 Issuance of Battleship U.S.S. New Jersey license plates.

1. The Director of the Division of Motor Vehicles shall, upon proper application therefor, issue Battleship U.S.S. New Jersey license plates for any motor vehicle owned or leased and registered in the State. In addition to the registration number and other markings of identification otherwise prescribed by law, the plate shall display a depiction of a battleship and wording which either recognizes the U.S.S. New Jersey's role in U.S. naval history or indicates support for the acquisition, restoration, and maintenance of the U.S.S. New Jersey. The wording, design and color scheme of the plate shall be chosen by the director, in consultation with the U.S.S. New Jersey Battleship Commission.

C.39:3-27.68 Application procedure, fees.

2. Application for a Battleship U.S.S. New Jersey license plate shall be made to the Division of Motor Vehicles on forms and in a manner prescribed by the director and shall be accompanied by a fee of $50, which shall be in addition to all fees otherwise required by law for the registration of the motor vehicle. The annual renewal of a registration certificate of a motor vehicle that has been issued a Battleship U.S.S. New Jersey license plate shall be accompanied by an additional fee of $15. The $50 application fee and $15 renewal fee shall be deposited by the division in the Battleship New Jersey Memorial Fund created pursuant to section 3 of this act.

C.39:3-27.69 "Battleship New Jersey Memorial Fund."

3. There is created in the Department of the Treasury a special non-lapsing fund to be known as the "Battleship New Jersey Memorial Fund." There shall be deposited into the fund the additional application and renewal fees collected pursuant to section 2 of this act and any interest earned thereon, less the amounts necessary to reimburse the division for administrative costs pursuant to section 4 of this act. Monies deposited in the fund shall be dedicated for the acquisition, restoration and maintenance of the Battleship U.S.S. New Jersey by the U.S.S. New Jersey Battleship Commission.

C.39:3-27.70 Use of license plate fees.

4. a. Prior to the deposit of license plate fees collected pursuant to section 2 of this act into the fund, amounts thereof as are necessary shall be used to reimburse the division for costs reasonably and actually incurred as stipulated by the director for producing,

issuing, renewing, and publicizing the availability of Battleship U.S.S. New Jersey license plates, including the cost of any initial computer programming changes.

b. The director annually shall certify to the State Treasurer the average cost per license plate incurred in the immediately preceding year by the division in producing, issuing, renewing, and publicizing the availability of Battleship U.S.S. New Jersey license plates. The annual certification of the average cost per license plate shall be approved by the Joint Budget Oversight Committee, or its successor.

c. In the event that the average cost per license plate as certified by the director and approved by the Joint Budget Oversight Committee, or its successor, is greater than the $50 application fee established in section 2 of this act in two consecutive fiscal years, the director may discontinue the issuance of Battleship U.S.S. New Jersey license plates.

C.39:3-27.71 Notification to motorists.

5. The director shall notify eligible motorists of the opportunity to obtain Battleship U.S.S. New Jersey license plates by including a notice with all motor vehicle registration renewals and by posting appropriate posters or signs in all division facilities and offices. The notices, posters, and signs shall be designed by the division, after consultation with the U.S.S. New Jersey Battleship Commission.

6. This act shall take effect on the first day of the seventh month following enactment, but the director may take such anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved September 12, 1995.

CHAPTER 253

AN ACT concerning the disclosure of off-site conditions near residential real estate and supplementing Title 46 of the Revised Statutes.

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

C.46:3C-1 Short title.

1. This act shall be known, and may be cited, as the "New Residential Construction Off-Site Conditions Disclosure Act."

C.46:3C-2 Findings, declarations relative to purchase of residential real estate.

2. The Legislature finds and declares that the purchase of a residence involves a substantial portion of the average household's net worth, and the decision to purchase a particular residence requires consideration of a wide range of factors concerning the area in which the residential real estate is located; that the professionals who engage in the business of selling newly-constructed residential real estate can facilitate prudent decision-making with respect to the purchase of residences by advising purchasers of the availability of information concerning factors which can reasonably be determined to exist and which may affect the value of the residence; that the due diligence responsibilities of purchasers and the disclosure duties of sellers of residential real estate are mutually interdependent and, therefore, ambiguity in the definition and assignment of the sellers' disclosure duties may inadvertently diminish the due diligence efforts of purchasers, or unnecessarily increase the costs of residential real estate transactions; and that there currently exists ambiguity concerning the disclosure duties of the sellers of residential real estate.

The Legislature therefore determines that it is in the public interest to define the entirety of the disclosure duties of the sellers of newly constructed residential real estate and to create a public repository of relevant off-site conditions which may be accessed by purchasers of such real estate.

C.46:3C-3 Definitions.

3. As used in this act:

"Newly constructed" means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease and units governed by the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C.§5401 et seq.

"Off-site conditions" mean those conditions which may materially affect the value of the residential real estate property and shall be limited to the following:

(1) The latest Department of Environmental Protection listing of sites included on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq.;

(2) The latest sites known to and confirmed by the Department of Environmental Protection and included on the New Jersey master list of known hazardous discharge sites, prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.);

(3) Overhead electric utility transmission lines conducting 240,000 volts or more;

(4) Electrical transformer substations;

(5) Underground gas transmission lines as defined in 49 C.F.R.192.3;

(6) Sewer pump stations of a capacity equal to, or in excess of 0.5 million gallons per day and sewer trunk lines in excess of 15 inches in diameter;

(7) Sanitary landfill facilities as defined pursuant to section 3 of P.L.1970, c.39 (C.13:1E-3);

(8) Public wastewater treatment facilities; and

(9) Airport safety zones as defined pursuant to section 3 of P.L.1983, c.260 (C.6:1-82).

"Person" means an individual, firm, corporation, limited liability corporation, partnership, association, trust or other legal entity or any combination thereof.

"Property" means a lot or plat upon which a residence has been, or will be, constructed.

"Project" means the development site upon which residential real estate for one or more purchasers is being constructed.

"Public wastewater treatment facility" means a structure or land involving the collection, conveyance, storage, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater or sewage sludge.

"Purchaser" means a buyer of newly constructed residential real estate.

"Residential real estate" means a property or structure or both which will serve as a residence for the purchaser.

"Seller" means a real estate broker, real estate salesperson and real estate broker-salesperson as defined in R.S.45:15-3 or a builder as defined in section 2 of P.L.1977, c.467 (C.46:3B-2) who is engaged in the sale of newly constructed residential real estate.

C.46:3C-4 Off-site conditions, municipal lists.

4. The municipal clerk of each municipality shall receive and make available, in the form and manner specified by the Commissioner of Community Affairs after consultation with the Department of Environmental Protection, lists identifying the location of off-site conditions existing within the boundaries of the municipality.

C.46:3C-5 Providing municipal clerk with lists of off-site conditions.

5. a. Every person who owns, leases, or maintains any off-site condition, as defined in paragraph (3), (4), (5), (6), or (8) of section 3 of P.L.1995, c.253 (C.46:3C-3), located in this State, shall

provide the municipal clerk of each municipality in which those off-site conditions are located, a list in the form and manner specified by the Commissioner of Community Affairs, of the location of the off-site conditions within the boundaries of the municipality. The provisions of this subsection shall apply whether or not the person provides any service within a municipality in which an off-site condition exists.

b. Every person subject to the provisions of subsection a. of this section shall submit the required lists within one year of the effective date of this act and shall update the lists, as necessary, as of August 31 of every year.

The person providing the lists pursuant to this section shall also send to the municipal clerk of each municipality receiving the list a statement as follows:

"This list identifies [insert type] off-site conditions owned, leased or maintained by [insert name and address of provider] as defined in the "New Residential Construction Off-Site Conditions Disclosure Act," P.L.1995, c.253 (C.46:3C-1 et seq.), which as of [date] have been identified as existing within [name of municipality]."

C.46:3C-6 Lists from the Commissioner of Environmental Protection.

6. a. The Commissioner of Environmental Protection shall provide the municipal clerk of each municipality with lists, in the form and manner specified by the Commissioner of Community Affairs, after consultation with the Department of Environmental Protection, of the location of all off-site conditions, as defined in paragraphs (1), (2) and (7) of section 3 of P.L.1995, c.253 (C.46:3C-3), located within the boundaries of the municipality.

b. The Commissioner of Environmental Protection shall submit the lists within one year of the effective date of this act and shall update the lists, as necessary, as of August 31 of every year. The department shall also send to the municipal clerk of each municipality receiving the lists a statement as follows:

"This list identifies [insert type] off-site conditions as defined in the "New Residential Construction Off-Site Conditions Disclosure Act," P.L.1995, c.253 (C.46:3C-1 et seq.), which as of [date] have been identified and listed by the Department of Environmental Protection as existing within [name of municipality]."

C.46:3C-7 Fees for copies of lists.

7. A municipality that receives and makes available the lists required under this act may charge purchasers by the page for its actual reproduction costs.

C.46:3C-8 Seller's notice regarding off-site conditions.

8. At the time of entering into a contract for the sale of newly constructed residential real estate, the seller shall provide the purchaser with a notice of the availability of the lists of the off-site conditions that exist not only within the boundaries of the municipality in which the residential real estate is located but also within any other municipality located within one-half mile of the residential real estate. The notice shall be as follows:

"NOTIFICATION REGARDING OFF-SITE CONDITIONS

Pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act," P.L.1995, c.253 (C.46:3C-1 et seq.), sellers of newly constructed residential real estate are required to notify purchasers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the municipalities relevant to this project and the appropriate municipal offices where the lists are made available are listed below. Purchasers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Purchasers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

The purchaser has five (5) business days from the date the contract is executed by the purchaser and the seller to send notice of cancellation of the contract to the seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the purchaser does not send a notice of cancellation to the seller in the time or manner described above, the purchaser will lose the right to cancel the contract as provided in this notice.

MUNICIPALITY_____

ADDRESS _____

TELEPHONE NUMBER_____"

C.46:3C-9 Cancellation of contract.

9. The purchaser may cancel the contract by sending a written notice of cancellation to the seller within five business days from the date the contract is executed by the purchaser and the seller, informing the seller that the purchaser is canceling the contract. The notice of cancellation shall be sent by certified mail. If the purchaser fails to send the notice of cancellation in the time and manner provided for in this section, the purchaser shall lose the right to cancel the contract pursuant to this act and the contract shall be otherwise legally binding.

C.46:3C-10 Seller's disclosure duties.

10. a. By providing the purchaser with the notice of the availability of the lists, as required by section 8 of P.L.1995, c.253 (C.46:3C-8), the seller shall be deemed to have disclosed fully the off-site conditions relating to the residential real estate and shall be deemed to have satisfied fully the seller's disclosure duties pursuant to New Jersey law notwithstanding that (1) the lists required to be submitted to the municipal clerk of each municipality pursuant to sections 5 and 6 of P.L.1995, c.253 (C.46:3C-5 and C.46:3C-6) have not been, or are not yet required to be submitted or (2) a municipal clerk has not received or made available the lists as required pursuant to section 4 of P.L.1995, c.253 (C.46:3C-4) or (3) there is any error, omission or inaccuracy in the lists as made available by the municipality. This furnishing of the notice shall be available to the seller as a defense to any claim that the seller failed to disclose any off-site conditions.

b. A seller's responsibility to disclose those conditions that may materially affect the value of the residential real estate, but which are not part of the project, shall be fully met when notice is provided in accordance with the provisions of P.L.1995, c.253 (C.46:3C-1 et seq.). The furnishing of the notice shall be available to the seller as a defense to any claim that the seller failed to disclose any conditions which are not part of the project.

c. With respect to any residential real estate contracts entered into and fully executed prior to the effective date of this act, no seller shall be deemed to have breached any duty to disclose, nor shall any seller be liable to any person for any loss, damage, or any other injury for failure to have disclosed the existence of any off-site condition or any other condition which is not part of the residential real estate, except in any specific cases in which there has been an action filed in the Superior Court prior to April 25, 1995, or in which

the Appellate Division of the Superior Court or the Supreme Court has issued a decision prior to the effective date of this act.

d. The provisions of P.L.1995, c.253 (C.46:3C-1 et seq.) shall not be interpreted to affect the disclosure requirements for conditions off-site contained in "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) or in any other statutory provision.

C.46:3C-11 Seller not required to contribute to list.

11. No seller, unless otherwise required by section 5, as a condition of completeness or approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), or any other law, rule or regulation adopted pursuant thereto, shall be required to compile or to contribute to the compilation of, in whole or in part, the lists of off-site conditions required to be made available by municipal clerks pursuant to this act.

C.46:3C-12 Nonliability for civil damages.

12. The Department of Environmental Protection or a municipality making available to purchasers lists which disclose the existence and location of off-site conditions pursuant to this act shall not be liable for civil damages for withholding or omitting facts pertaining to such conditions which materially affected the value of the property or otherwise caused any loss, damage or other injury to the plaintiff, unless the plaintiff can affirmatively demonstrate that the department or municipality was in possession of, or which a reasonable person would conclude that it had or should have had knowledge of, those facts and the department or municipality knowingly or intentionally omitted or withheld the facts.

13. The Department of Community Affairs and the Department of Environmental Protection shall report to the Legislature and the Governor 18 months after the effective date of this act concerning the impact of this act and the staffing levels and costs needed to properly effectuate its purposes. The Department of Community Affairs shall also focus its attention in the report on the municipalities' role and success in effectuating the act. Both departments shall make recommendations they deem necessary to improve the procedures required by the act and to impose penalties for noncompliance with section 4, subsection a. of section 5, and subsection a. of section 6. The Department of Environmental Protection shall address the feasibility of providing maps of off-site conditions.

14. This act shall take effect immediately and shall apply to every contract for the sale of residential real estate entered into after the effective date, except that subsection c. of section 10 of this act shall apply retroactively to residential real estate contracts entered into prior to the effective date.

Approved September 12, 1995.

CHAPTER 254

AN ACT permitting the State and the counties to seek reimbursements for certain expenses incurred by State correctional facilities and county jails, amending and supplementing Title 30 of the Revised Statutes and amending N.J.S.2C:44-6.

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

C.30:7E-1 Definitions relative to inmate health care.

1. As used in sections 2 thru 6 of this act:

a. "Commissioner" means the Commissioner of the Department of Corrections.

b. "County" includes any person acting pursuant to a contract with a county who provides services for which a county is entitled to reimbursement or a nominal fee under the provisions of this act.

c. "Covered person" means a person who is covered by a plan for health benefits and expenses but not as an enrollee.

d. "Enrollee" means the person who receives a certificate or other proof of coverage from a health insurance plan that covers the person for health benefits and expenses.

e. "Health insurance plan" means any hospital and medical expense insurance policy; health, hospital or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate or dental or vision plan.

f. "Inmate" means a person sentenced to imprisonment, or ordered to pretrial or investigative detention, in a State correctional facility or county jail.

g. "State" includes any person acting pursuant to a contract with the State who provides services for which the State is entitled to reimbursement or a nominal fee under the provisions of this act.

C.30:7E-2 Liability of inmate for costs.

2. a. An inmate shall be liable for the cost of, and be charged a nominal fee for, any medical care, surgery, dental care, hospitalization or treatment provided to the inmate during the inmate's term of incarceration or detention by the State or a county. If the inmate is incarcerated or detained in a State correctional facility or State contracted half-way house, the amount due and payable and the nominal fees charged under the provisions of this act shall be determined by the State Treasurer in accordance with guidelines promulgated by the commissioner. If the inmate is incarcerated or detained in a county jail, the amount due and payable and the nominal fees charged under the provisions of this act shall be determined by the county treasurer in accordance with guidelines promulgated by the county adjustor.

b. An inmate may be charged either the full cost of or a nominal fee for any prescription or nonprescription drug or medicine provided to the inmate during the inmate's term of incarceration or detention by the State or a county. If the inmate is incarcerated or detained in a State correctional facility or State contracted half-way house, the cost or nominal fees charged under the provisions of this act shall be determined by the State Treasurer in accordance with guidelines promulgated by the commissioner. If the inmate is incarcerated or detained in a county jail, the amount due and payable and the nominal fees charged under the provisions of this act shall be determined by the county treasurer in accordance with guidelines promulgated by the county adjustor.

C.30:7E-3 Reimbursements for medical care of inmates.

3. a. Whenever the court shall determine, from its due consideration of the presentence report prepared in accordance with the provisions of N.J.S.2C:44-6 or any pretrial investigation or report, that a person to be sentenced to a term of imprisonment or ordered to detention in a State correctional facility or county jail is an enrollee or a covered person under a health insurance plan, it shall, as part of the disposition imposing the term of imprisonment or order providing for detention, so notify the commissioner or the chief administrative officer of the appropriate county jail.

b. The State Treasurer or county treasurer shall file a claim with the health insurance plan for a reimbursement of the costs incurred by the State or the county, in providing any medical care, surgery, hospitalization or treatment to any inmate who is covered under a health

insurance plan. The claim shall be filed in accordance with the rules and regulations promulgated pursuant to subsection f. of this section.

The reimbursements authorized under this subsection shall be payable to the State Treasurer or the county treasurer and shall be used exclusively for the purpose of defraying the costs incurred by the State or the county in providing medical care, surgery, dental care, hospitalization or treatment to an inmate.

c. Nothing in Title 30 of the Revised Statutes concerning the responsibility of the commissioner to provide for the care and custody of the inmates in a State correctional facility under the commissioner's control shall be construed to prohibit, restrict or otherwise hinder the State in seeking reimbursement in accordance with the provisions of this act from an inmate or a health insurance plan for any costs incurred by the State correctional facility in providing medical care, dental care, surgery, hospitalization or treatment to an inmate.

d. Nothing in R.S.30:8-17 concerning a sheriff's responsibility to provide for the care and custody of the prisoners or detainees in a jail under his control shall be construed to prohibit, restrict or otherwise hinder the county in seeking reimbursement in accordance with the provisions of this act from an inmate or a health insurance plan for any costs incurred by the county jail in providing medical care, dental care, surgery, hospitalization or treatment to an inmate.

e. Nothing in R.S.30:8-19 concerning the county governing body's responsibility to provide for the custody and care of the prisoners or detainees in a jail under its control shall be construed to prohibit, restrict or otherwise hinder the county in seeking reimbursement in accordance with the provisions of this act from an inmate or a health insurance plan for any costs incurred by the county jail in providing medical care, dental care, surgery, hospitalization or treatment to an inmate.

f. The Commissioner of the Department of Insurance, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this section. Those rules and regulations shall include:

(1) Procedures for the filing of the reimbursement claims permitted under this section;

(2) Provisions specifying the primary coverage responsibilities of health insurance plans, subject to the provisions of this section; and

(3) Such other matters as the Commissioner of the Department of Insurance may deem appropriate and necessary.

g. Nothing in this act shall be construed to require or allow an inmate to obtain services from a doctor, dentist, surgeon or other health care practitioner or facility other than the services provided by a State correctional facility or county jail.

C.30:7E-4 Lien for unpaid amounts.

4. a. In the event an inmate is not covered under a health insurance plan, or if the inmate's insurance plan does not fully cover the costs of any medical care, dental care, surgery, hospitalization or treatment provided by the State or the county, the State or county may have a lien for any unpaid amounts due and payable under the provisions of section 2 of P.L.1995, c.254 (C.30:7E-2) on any and all property and income to which the person shall have or may acquire an interest. If an inmate fails to reimburse the State or county, for the cost of or any fee charged for the cost of any prescription or nonprescription drug or medicine, as provided pursuant to section 2 of P.L.1995, c.254 (C.30:7E-2) the State or county may also have a lien on any or all property or income which the inmate shall have or may acquire an interest. When properly filed as hereinafter provided, the lien shall have priority over all unrecorded encumbrances.

b. The lien shall be in a form to be prescribed by the State Treasurer and shall contain the words "State of New Jersey" or the name of the county, the name of the inmate, the date of commitment or detention, the inmate's address on the date of commitment or detention, the inmate's date of birth and the amount due and payable for any medical care, dental care, surgery, hospitalization, treatment, or prescription or nonprescription drugs or medicines rendered therein on the date of the filing of the lien, together with notice of the rate of accumulation, if any, thereafter. The lien shall be signed by the State Treasurer or the county treasurer or his duly constituted agent. Nothing herein shall preclude the State or county from recovering for any medical care, surgery, hospitalization, treatment, or nonprescription drug or medicine furnished but not covered by any lien.

c. As an additional remedy, the State Treasurer, county treasurer or commissioner may issue a certificate to the clerk of the Superior Court stating that the person identified in the certificate is indebted under the provisions of this act in such an amount as shall be stated in the certificate. The certificate shall reference the statute under which the indebtedness arises. Thereupon the clerk shall immediately enter upon the record of docketed judgments the name of such inmate as debtor; the State or county as

creditor; the address of such inmate if shown in the certificate; the amount of the debt so certified; a reference to the statute under which the debt is assessed; and the date of making such entries. The docketing of the certificate shall have the same force and effect as a civil judgment docketed in the Superior Court and the State or county shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in action, but without prejudice to any right to appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with the provisions of this subsection, interest in the amount specified by court rule for post-judgment interest shall accrue from the date of the docketing of the certificate; provided, however, payment of the interest may be waived by the State Treasurer or county treasurer. In the event that the debt remains unpaid following the issuance of the certificate of debt and either the State Treasurer or county treasurer take any further collections action including referral of the matter to the Attorney General or his designee or in the case of a county, referral or the matter to the county adjustor or his designee, the fee imposed in lieu of the actual cost of collection, may be 20% of the debt or $200.00, whichever is greater.

d. The clerk of the Superior Court shall provide suitable books in which shall be entered copies of the liens filed pursuant to this section. The entries shall be properly indexed in the name of the inmate.

All liens and other papers incidental thereto required for the purposes of this section shall be received and recorded by the clerk of the Superior Court, without payment of fees.

e. To discharge any lien or liens filed pursuant to this section, the State Treasurer or county treasurer or his duly constituted agent shall file with the clerk of the Superior Court, a duly acknowledged certificate setting forth the fact that the county desires to discharge the lien of record.

The State Treasurer or county treasurer is authorized to compromise for settlement any lien filed under the provisions of this section for medical care, dental care, surgery, hospitalization or treatment rendered to an inmate. A memorandum of compromise and settlement signed by the State Treasurer or county treasurer shall be sufficient authorization for a complete discharge of the lien.

f. Any person desiring to secure immediate discharge of any lien may deposit with the court cash in an amount sufficient to cover the amount of the lien, or post a bond in an amount and with sureties approved by the court. Upon proper notice to the

State or county of such deposit or bond, a satisfaction of the lien shall be filed forthwith with the clerk of the Superior Court.

g. Any person affected in any manner, whether directly or indirectly by any lien filed under the provisions of this section, and desiring to examine the validity of the lien or the facts and circumstances surrounding the entry of the lien, may do so in an action brought in the county where the lien was filed. The action shall be brought against the State or county institution claiming the lien, and the court may proceed in the action in a summary manner and enter such judgment as it may deem appropriate.

C.30:7E-5 Inmates entitled to health care.

5. Notwithstanding the provisions of sections 2, 3 and 4 this act, no inmate shall be denied medical care, surgery, dental care, hospitalization, treatment or prescription or nonprescription drugs or medicine because he is not covered under a health insurance plan or because that inmate is unable to reimburse the State or county for the costs of those services, drugs or medicines.

C.30:7E-6 Rules, regulations.

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

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

Procedure on sentence; presentence investigation and report.

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

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

b. The presentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation, financial resources, including whether or not the defendant is an enrollee or covered person under a health insurance contract, policy or plan, debts, including any amount owed for a fine, assessment or restitution ordered in accordance with the provisions of Title 2C, employment history, personal habits, the

disposition of any charge made against any codefendants and may include a report on his physical and mental condition and any other matters that the probation officer deems relevant or the court directs to be included. In any case involving a conviction of N.J.S.2C:24-4, endangering the welfare of a child; N.J.S.2C:18-3, criminal trespass, where the trespass was committed in a school building or on school property; section 1 of P.L.1993, c.291 (C.2C:13-6), attempting to lure or entice a child with purpose to commit a criminal offense; section 1 of P.L.1992, c.209 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the victim of the offense is a child under the age of 18, the investigation shall include a report on the defendant's mental condition unless the court directs otherwise.

The presentence report shall also include a report on any compensation paid by the Victims of Crime Compensation Board as a result of the commission of the offense and, in any case where the victim chooses to provide one, a statement by the victim of the offense for which the defendant is being sentenced. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss to include loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family. The probation department shall notify the victim or nearest relative of a homicide victim of his right to make a statement for inclusion in the presentence report if the victim or relative so desires. Any such statement shall be made within 20 days of notification by the probation department.

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

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

d. Disclosure of any presentence investigation report or psychiatric examination report shall be in accordance with law and the Rules of Court, except that information concerning the defen-

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dant's financial resources shall be made available upon request to the Victims of Crime Compensation Board or to any officer authorized under the provisions of section 3 of P.L.1979, c.396 (C.2C:46-4) to collect payment on an assessment, restitution or fine and that information concerning the defendant's coverage under any health insurance contract, policy or plan shall be made available, as appropriate to the Commissioner of the Department of Corrections and to the chief administrative officer of a county jail in accordance with the provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

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

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

8. R.S.30:4-7 is amended to read as follows:

Hospitalization of inmates.

30:4-7. Hospitalization of inmates.

The Commissioner of the Department of Corrections shall have power to place any inmate in any hospital in the State for such medical or surgical treatment as may be necessary, which cannot properly and adequately be rendered within the institution.

19. Section 4 of P.L.1969, c.22 (C.30:4-91.4) is amended to read as follows:

C.30:4-91.4 Withdrawals from inmate's account.

4. The commissioner, as a part of any work release program for an inmate, shall require that any wages, salary, earnings and other income of each gainfully employed prisoner be paid, less payroll deductions required or authorized by law, to the superintendent of the institution who shall deposit such sums so received to the credit of such inmate in a trust fund account at such institution. From such trust fund account belonging to any inmate the superintendent of the institution is empowered to withdraw moneys, in an amount not to exceed one-half the total income, as follows:

The superintendent shall withdraw up to one-third of that amount in order to collect assessments, restitutions and fines pursuant to the requirements of section 3 of P.L.1979, c.396 (C.2C:46-4).

The superintendent may withdraw up to two-thirds of that amount as may be required to pay the following:

(a) Such costs of maintenance related to the prisoner's confinement as are determined by the State Board of Control to be appropriate and reasonable, including costs and fees charged or owing pursuant to section 2 of P.L.1995, c.254 (C.30:7E-2).

(b) Necessary travel expenses to and from work or other business and incidental expenses of the prisoner.

(c) Support of the prisoner's dependents, if necessary.

(d) (Deleted by amendment, P.L.1991, c.329).

(e) Payment of either in full or ratably of the prisoner's debts which have been reduced to judgment or which have been acknowledged in writing by him.

(f) The balance, if any, shall be paid to the prisoner at the completion of the period of his confinement.

10. R.S.30:4-92 is amended to read as follows:

Compensation for inmates.

30:4-92. The inmates of all correctional and charitable, hospital, relief and training institutions within the jurisdiction of the State Board shall be employed in such productive occupations as are consistent with their health, strength and mental capacity and shall receive such compensation therefor as the State Board shall determine.

Compensation for inmates of correctional institutions may be in the form of cash or remission of time from sentence or both. Such remission from the time of sentence shall not exceed one day for each five days of productive occupation, but remission granted under this section shall in no way affect deductions for good behavior or provided by law.

From moneys paid to inmates of correctional institutions, the superintendent of the institution shall withdraw sufficient moneys, in an amount not to exceed one-third of the inmate's total income, as may be required to pay any assessment, restitution or fine ordered as part of any sentence, and is authorized to withdraw from the remainder of the inmate's total income an amount not to exceed one-third of the total income as may be required to pay costs and fees charged or owing, pursuant to section 2 of P.L.1995, c.254 (C.30:7E-2).

In addition, all inmates classified as minimum security and who are considered sufficiently trustworthy to be employed in honor camps, farms or details shall receive further remission of time from sentence at the rate of three days per month for the first year

of such employment and five days per month for the second and each subsequent year of such employment.

11. This act shall take effect on the first day of the fourth month following enactment.

Approved November 1, 1995.

CHAPTER 255

AN ACT concerning animal forfeiture and supplementing chapter 22 of Title 4 of the Revised Statutes.

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

C.4:22-26.1 Confiscation, forfeiture of animal.

1. An officer or agent of the New Jersey Society for the Prevention of Cruelty to Animals, or a certified animal control officer, may petition a court of competent jurisdiction to have any animal confiscated and forfeited that is owned or possessed by a person at the time the person is found to be guilty of violating R.S.4:22-17, R.S.4:22-18, R.S.4:22-19, R.S.4:22-20 or R.S.4:22-23. Upon a finding that the continued possession by that person poses a threat to the animal's welfare, the court may, in addition to any other penalty that may be imposed for a violation of R.S.4:22-17, R.S.4:22-18, R.S.4:22-19, R.S.4:22-20 or R.S.4:22-23, adjudge an animal forfeited for such disposition as the court deems appropriate.

2. This act shall take effect immediately.

Approved November 2, 1995.

CHAPTER 256

AN ACT establishing an At-Risk Youth Employment Internship Program in the Department of Education and supplementing chapter 54 of Title 18A of the New Jersey Statutes.

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

C.18A:54F-1 Findings, declarations.

1. The Legislature finds and declares that educational experts agree that at-risk youths face unique social and economic problems which work to inhibit their academic achievement and eventually their successful integration into the workplace; that the New Jersey Supreme Court in its June, 1990 Abbott v. Burke decision ordered that provision be made and programs developed to address the special disadvantages of at-risk students; and, that in its July, 1994 Abbott v. Burke decision, the Supreme Court suggested the need for the State itself to specifically identify and implement the supplemental programs necessary to meet the needs of at-risk youth.

The Legislature further finds that the development of an At-Risk Youth Employment Internship Program within the Department of Education would assist in addressing the needs and conditions which place students at risk of not acquiring the knowledge, skills, behaviors, and attitudes necessary for school success and future successful functioning as adults in society and also would assist in meeting the State's obligation to identify and implement specific programs for at-risk youths.

C.18A:54F-2 At-Risk Youth Employment Internship Program, established.

2. There is established in the Department of Education an At-Risk Youth Employment Internship Program to be administered by the Commissioner of Education pursuant to the provisions of this act. The program shall provide for the placement of at-risk public school students in employment internships with public or private profit or nonprofit employers and the payment of a training stipend to those students. The purpose of the program shall be to enable at-risk students to acquire a thorough knowledge of the business operations of the employer with which the student is placed and an understanding of the linkage between the skills, behaviors, and attitudes necessary for school success and future successful functioning as an adult in the workplace.

C.18A:54F-3 Selection of school districts for pilot program.

3. a. The Commissioner of Education shall develop and administer the program on a pilot basis. The commissioner shall select local school districts to participate in the program based upon the number of at-risk students within the district, the interest of public and private profit or nonprofit employers located within the district in participating in the program, and the commissioner's evaluation of the district's

ability to successfully implement the program. In selecting school districts to participate, the commissioner shall include urban and suburban districts from the north, central and southern regions of the State with at least one school district per county.

b. A school district which wants to participate in the program shall provide to the commissioner an outline of its proposed program which shall include, but not be limited to: information on the number and grade level of the at-risk students who will participate in the program; the process of student referral to the program; the selection criteria for student participants which, in addition to eligibility for at-risk funding under section 80 of P.L.1990, c.52 (C.18A:7D-20), shall include the identification of students who are not meeting district standards of behavior and academic achievement; a listing of employers within the district who have agreed to participate in the program and the process which will be utilized for matching students to employment internship opportunities; and, an analysis of the manner in which student employment experiences will enhance the self-esteem and assimilation of life skills necessary for productive functioning in the school setting and society.

C.18A:54F-4 Student, employer remuneration; work study funds.

4. a. Each student's employment internship under the program shall be for a period of two hours, three days per week unless the district determines that some other employment schedule would be of greater benefit to the student. For participation in the employment internship, the student shall receive a stipend in the amount of $25 per week.

b. A public or private profit or nonprofit employer which participates in the program shall receive a stipend in the amount of $150 per month to cover any administrative or other costs which the employer may incur as a result of participation.

c. The commissioner shall approve a plan for the utilization of work study funds allocated under N.J.S.18A:58-34 and other State or federal funds available for services to at-risk students to finance the student and administrative stipends and any other costs associated with the program. The commissioner may, if he determines that a school district's participation in the program is in the best interests of its at-risk students, review a school district's budget and direct the district to reallocate funds to the program. The commissioner may also direct the participation of any school district in the program if the commissioner determines that the implementa-

tion of the program would constitute a demonstrably effective improvement strategy for the district's at-risk students.

C.18A:54F-5 Plan to track effectiveness of program; recommendation.

5. a. The commissioner shall implement a plan to collect data on the effectiveness of the program in meeting the needs and conditions of students which place them at-risk of academic and social failure. The plan shall include a system to track student participants to determine if those students successfully completed the school year.

b. Two years following the effective date of this act, the commissioner shall submit to the Governor and the Legislature an evaluation of the At-Risk Youth Employment Internship Program and a recommendation on the advisability of its continuation and expansion to other school districts within the State.

C.18A:54F-6 Rules, regulations.

6. The State Board of Education shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations necessary to carry out the provisions of this act.

7. This act shall take effect immediately.

Approved November 4, 1995.

CHAPTER 257

AN ACT concerning human body part donations, amending and supplementing P.L.1969, c.161 and amending P.L.1987, c.244.

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

C.26:6-58.4 Findings, declarations.

1. The Legislature finds and declares that: there is a need to increase the number of suitable organs recovered and transplanted in New Jersey, and that toward that end, and in the interest of cost-effective health care delivery, medical professionals and technicians should be trained as transplant recovery specialists and should be enabled to perform the recovery of human body parts within licensed hospitals, independent of physician supervi-

sion. Recovery and transplantation will be further increased by the requirement that acute care hospitals provide federally designated organ procurement organizations with information concerning each death, and the accompanying medical information necessary for the organization to complete an audit in accordance with federal law.

2. Section 1 of P.L.1969, c.161 (C.26:6-57) is amended to read as follows:

C.26:6-57 Definitions relative to human body part donations.

1. As used in this act:

(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any State for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited, or approved under the laws of any State; includes a hospital operated by the United States Government, a State, or a subdivision thereof, although not required to be licensed under State laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any State.

(h) "State" includes any State, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(i) "Transplant recovery specialist" means a medical professional licensed by this or another State or technician trained by an organ procurement organization in accordance with federal standards pursuant to 42 U.S.C.§274(b) and nationally accredited standards for human body part removal.

(j) "Organ procurement organization" means an organization which is qualified by the Secretary of Health and Human Services pursuant to 42 U.S.C.§273(b).

3. Section 1 of P.L.1987, c.244 (C.26:6-58.1) is amended to read as follows:

C.26:6-58.1 Anatomical gift consent by relative.

1. a. When the decision has been made in a hospital to pronounce the death of a person who, based on accepted medical standards, is a suitable candidate for human body part donation, the person in charge of the hospital, or that person's designated representative, other than a person connected with the determination of death, shall make known to any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class specified in paragraph (1), (2), (3), (4), (5) or (6) of this subsection, or when there is any other reason to believe that an anatomical gift is contrary to the decedent's religious beliefs, that the person has the option to consent to the gift of all or any part of the decedent's body for any purpose specified in section 3 of P.L.1969, c.161 (C.26:6-59):

(1) the spouse,

(2) an adult son or daughter,

(3) either parent,

(4) an adult brother or sister,

(5) a guardian of the person of the decedent at the time of the decedent's death, or

(6) any other person authorized or under the obligation to dispose of the body.

Consent or refusal need only be obtained from a person in the highest priority class available.

b. The person in charge of the hospital or that person's designated representative shall indicate in the medical record of the decedent whether or not consent was granted, the name of the person granting or refusing the consent, and that person's relationship to the decedent.

c. A gift made pursuant to the request required by this act shall be executed pursuant to the applicable provisions of P.L.1969, c.161 (C.26:6-57 et seq.).

d. A person who acts in good faith in accordance with the provisions of this act is not liable for any damages in any civil action or subject to prosecution in any criminal proceeding for any act or omission of the person.

e. If the decedent is deemed an unsuitable candidate for donation, an explanatory notation shall be made part of the medical record of the decedent.

4. Section 2 of P.L.1987, c.244 (C.26:6-58.2) is amended to read as follows:

C.26:6-58.2 Program for acquisition, distribution of human body parts.

2. The Commissioner of Health shall establish a program to be administered by hospitals and other public and private agencies that are involved in the acquisition and distribution of human body parts to:

a. Increase public and health care professional awareness of the provisions of this act and P.L.1995, c.257 (C.26:6-58.4 et al.) regarding the acquisition and distribution of human body parts; and

b. Investigate the methods used by other states for the acquisition and distribution of human body parts, reciprocity agreements established between other states, and the development of similar agreements between New Jersey and other states.

5. Section 3 of P.L.1987, c.244 (C.26:6-58.3) is amended to read as follows:

C.26:6-58.3 Rules, regulations.

3. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the commissioner, in consultation with professionals involved in human body part transplants, shall adopt such rules and regulations as are necessary to effectuate the purposes of this act including, but not limited to, regulations concerning the training of hospital employees who may be designated to perform the request, the procedure to be employed in making the request, and where, based on medical criteria, the request would not yield a donation which would be suitable for use, the commissioner may, by regulation, authorize an exception to the request required by section 1 of P.L.1987, c.244 (C.26:6-58.1).

C.26:6-58.5 Transplant recovery specialist's recovery of human body part.

6. A transplant recovery specialist may recover a human body part for any purpose specified in section 3 of P.L.1969, c.161 (C.26:6-59). A physician shall not be required to be present during the recovery procedure. Nothing in this section shall be construed to limit a physician or other person authorized by law to recover human body parts pursuant to law.

C.26:6-58.6 Medical record reviews by procurement organization.

7. An organ procurement organization may perform ongoing medical record reviews of all deaths occurring in an acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), for the purpose of determining body part donation potential by hospital.

C.26:6-58.7 Hospital notification to organ procurement organization.

8. An acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall notify and provide pertinent medical information to the organ procurement organization designated pursuant to 42 U.S.C.§273(b) concerning each death occurring in that hospital.

9. This act shall take effect immediately.

Approved November 6, 1995.

CHAPTER 258

AN ACT designating the night of November 9-10 in each year as Kristallnacht Memorial Night in New Jersey, amending P.L.1991, c.193 and supplementing Title 36 of the Revised Statutes.

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

C.36:1-12 Findings, declarations relative to Kristallnacht.

1. The Legislature finds and declares:

a. On the night of November 9-10, 1938, organized gangs of Nazi Gestapo agents instigated a horrible wave of wanton destruction aimed at Jews, Jewish synagogues, homes and shops in almost every town and city in Germany;

b. That night, Kristallnacht - "The Night of Broken Glass," witnessed some of the most brutal acts of intentional savagery ever committed by a sovereign government against a religious minority;

c. This barbaric and unprecedented event was coordinated and stimulated by the Gestapo, the dreaded secret police of Adolph Hitler and his tyrannical Nazi government which ruled Germany, for the express purpose of burning Jewish synagogues, destroying Jewish property and arresting as many Jews as possible;

d. The gruesome pogrom resulted in the burning of 119 synagogues, of which 76 were completely destroyed; the destruction or looting of 7,500 Jewish shops and homes; and the death of at least 36 Jews and the serious injury of at least 36 more;

e. On that same night of horror, 20,000 Jews were systematically rounded up "for their own protection" and sent to the heinous concentration camps of Dachau, Oranienburg-Sachenhausen and Buchenwald where their heads were shaven and they were forced to wear coarse prison suits stamped with the yellow Star of David and where death was a frequent and brutal visitor;

f. To compound the senseless tribulations suffered by Jews on Kristallnacht, the Nazis forced them to pay 25 million marks for the destruction of their own property and levied an additional fine of one billion marks, supposedly for their "crimes" against the state;

g. Kristallnacht for the first time confirmed to the world the truly evil nature of the Nazis and the totalitarian German government of Hitler, and it served as a horrible and ominous omen of how that government was in later years to coldly murder six million Jews and others in a mindless attempt at the genocide of an entire religious minority; and

h. It is imperative for the current generation of Americans and residents of New Jersey to remember the brutality of Kristallnacht and its importance as a portent of the Holocaust which later destroyed six million Jews and millions of others.

C.36:1-13 Kristallnacht Memorial Night designated.

2. The night of November 9-10 in each year is designated as Kristallnacht Memorial Night in New Jersey in honor of the innocent victims of that Nazi outrage. On the night of every November 9-10, the State Capitol Joint Management Commission, established pursuant to P.L.1992, c.67 (C.52:31-34 et seq.), shall ensure that each room and office in each State building within the Capitol Complex remains lit for the entire night as a remembrance of the terrible events of Kristallnacht and the Holocaust, and as a symbol of hope that humanity will finally unite to put an end to genocide. The State Capitol Joint Management Commission shall consult with the New Jersey Commission on Holocaust Education, established pursuant to P.L.1991, c.193 (C.18A:4A-1 et seq.), on increasing public awareness of Kristallnacht Memorial Night in New Jersey.

3. Section 3 of P.L.1991, c.193 (C.18A:4A-3) is amended to read as follows:

C.18A:4A-3 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 private schools with respect to the implementation of Holocaust education and awareness programs;

b. To meet with county and local school officials and other interested public and private organizations, including service organizations, for the purpose of assisting with the planning, coordination or modification of courses of study dealing with the subject of the Holocaust;

c. To survey and catalog the extent and breadth of Holocaust and genocide education presently being incorporated into the curricula and taught in the school systems of the State, to inventory those Holocaust memorials, exhibits and resources which could be incorporated in 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 Holocaust and genocide education programs. In furtherance of this responsibility, the commission shall be authorized to contact and cooperate with existing Holocaust and genocide public or private nonprofit resource organizations and may act as a liaison concerning Holocaust and genocide education 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 the subject of the Holocaust. These volunteers may be survivors of the Holocaust, liberators of concentration camps, scholars, clergymen, community relations professionals and other persons who, by virtue of their experience or interest, have acquired personal or academic knowledge of the Holocaust and who are willing to share that knowledge with students and teachers;

e. To coordinate events memorializing the Holocaust and to seek volunteers who are willing and able to participate in commemorative events that will enhance student awareness of the significance of the Holocaust;

f. To prepare reports for the Governor and the Legislature regarding its findings and recommendations to facilitate the inclusion of Holocaust studies and special programs memorializing the Holocaust in educational systems in the State; and

g. To advise and assist the State Capitol Joint Management Commission, established pursuant to P.L.1992, c.67 (C.52:31-34

et seq.), for the purpose of increasing public awareness of the annual observance of Kristallnacht Memorial Night in New Jersey.

4. This act shall take effect immediately.

Approved November 9, 1995.

CHAPTER 259

AN ACT relaxing certain State imposed mandates and revising and repealing various parts of the statutory law.

WHEREAS, Over the past four decades a pattern has emerged in our State by which State government has routinely and systematically imposed greater and greater numbers of mandates, orders, directives and burdens on local government. This web of mandates and burdens has come 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 have occurred in order to address a variety of public concerns, they all share a common philosophical underpinning: the mandatory implementation of State policy directives by local government officials.

WHEREAS, While the overwhelming majority of these statutes and regulations were 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 has itself become a matter of deep concern and a subject that cries for legislative relief. With each passing year the quantity of directives and orders flowing out of Trenton to local officials has increased, hamstringing municipal governments and forcing them to incur greater and greater costs in order to comply with them.

WHEREAS, While State aid allotments from Trenton to municipalities have risen steadily during the same time period, that rise simply has been unable to keep up with the ceaseless flow of costly mandates which has streamed out of the capital. When confronted with these costly mandates, local officials have been forced to turn to the property tax in order to pay for implementing them since the State aid allotments from Trenton have proven insufficient to cover the new costs.

WHEREAS, In response to this decades long pattern of seemingly inexorable increases in burdensome mandates from Trenton, local officials have repeatedly petitioned the Legislature for relief. In response to entreaties of local officials, various committees of several Legislatures have investigated their complaints and determined that relief from these mandates is long overdue.

WHEREAS, The subject of burdensome mandates, whether imposed by statute or by regulation, is one that must be addressed by the Legislature on an expedited basis, the Legislature has determined that the most effective and responsible way to ease the burdens imposed on local governments by existing mandates is through the enactment of an omnibus statute that repeals or modifies many of those mandates, while continuing to identify additional mandates for which relief can be given through subsequent enactments; and therefore,

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

1. Section 3 of P.L.1963, c.171 (C.54:4-8.12) is amended to read as follows:

C.54:4-8.12 Application for tax deduction.

3. No veteran's deduction from taxes assessed against real and personal property, as provided herein, shall be allowed except upon written application therefor, which application shall be on a form prescribed by the Director of the Division of Taxation, in the Department of the Treasury, and provided for the use of claimants hereunder by the governing body of the municipality constituting the taxing district in which such claim is to be filed and the application has been approved as provided in this act. The Director of the Division of Taxation shall annually furnish each municipality with a supply of application forms for use by the claimants. An assessor shall not require the filing of an application for a veteran's deduction under this act of any person who has filed, or shall file, a claim for an exemption from taxation under chapter 184 of the laws of 1951, on or before December 31, 1963, but shall approve a veteran's deduction for such person, if it appears from such claim for exemption that such person meets all the other prerequisites required by law for the approval of a claim for a veteran's deduction. Each assessor may at any time

inquire into the right of a claimant to the continuance of a veteran's deduction hereunder and for that purpose he may require the filing of a new application or the submission of such proof as he shall deem necessary to determine the right of the claimant to continuance of such deduction. No application for a veteran's deduction based upon service in the Armed Forces shall be allowed unless there is annexed thereto a copy, which may be photostatic, of claimant's certificate of honorable discharge or of his certificate of release under honorable circumstances from active service in time of war in a branch of the Armed Forces of the United States. In the case of an application by a surviving spouse said application shall not be allowed unless it clearly establishes that:

(a) Claimant's spouse died while on active duty in a branch of the Armed Forces of the United States, having had active service in time of war, as herein defined, in a branch of the Armed Forces of the United States, or in the case of a surviving spouse of a veteran, claimant shall establish that the veteran was honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States, (b) claimant's spouse was a citizen and resident of this State at the time of death, (c) claimant was the spouse of the veteran at the time of the veteran's death, and (d) claimant is a resident of this State and has not remarried.

2. Section 3 of P.L.1963, c.172 (C.54:4-8.42) is amended to read as follows:

C.54:4-8.42 Written application for deduction; inquiry into right.

3. No deduction, as provided herein, shall be allowed except upon written application therefor, which application shall be on a form prescribed by the Director of the Division of Taxation, in the Department of the Treasury, and provided for the use of claimants hereunder by the governing body of the municipality constituting the taxing district in which such claim is to be filed and the application has been approved as provided in this act. The Director of the Division of Taxation shall annually furnish each municipality with a supply of application forms for use by the claimants. As to claims for exemption from taxation filed with an assessor on or before November 1, 1963 on forms prescribed by the director, the assessor shall not require of any person who has filed such a claim the filing of an application for a tax deduction but shall approve such person for a tax deduction if it appears

from the claim for exemption from taxation that such person meets all the other prerequisites required by this act for the approval of the tax deduction. Each assessor may at any time inquire into the right of a claimant to the continuance of a deduction hereunder and for that purpose he may require the filing of a new application or the submission of such proof as he shall deem necessary to determine the right of the claimant to continuance of such deduction.

3. Section 5 of P.L.1964, c.255 (C.54:4-8.44a) is amended to read as follows:

C.54:4-8.44a Filing for tax deduction.

5. Every person who is allowed a deduction shall, except as hereinafter provided, be required to file with the collector of the taxing district on or before March 1 of the post-tax year a statement under oath of his income for the tax year and his anticipated income for the ensuing tax year as well as any other information deemed necessary to establish his right to a tax deduction for such ensuing tax year. The collector may grant a reasonable extension of time for filing the statement required by this section, which extension shall terminate no later than May 1 of the post-tax year, in any event where it shall appear to the satisfaction of the collector, verified by a physician's certificate, that the failure to file by March 1 was due to illness or a medical problem which prevented timely filing of the statement. In any case where such an extension is granted by the collector, the required statement shall be filed on or before May 1 of the post-tax year.

Such statement shall be on a form prescribed by the Director of the Division of Taxation, in the Department of the Treasury. The statement shall be mailed by the Director of the Division of Taxation with a return envelope addressed to the governing body of the municipality constituting the taxing district on or before February 1 of the post-tax year to each person within the taxing district who was allowed a deduction in the preceding year. In addition, the Director of the Division of Taxation shall at the same time furnish a supply of post-tax year statements to the tax collector in each municipality. Each collector may require the submission of such proof as he shall deem necessary to verify any such statement. Upon the failure of any such person to file the statement within time herein provided or to submit such proof as the collector deems necessary to verify a statement that has been filed, or if it is determined that the income of any such person

exceeded the applicable income limitation for said tax year, his tax deduction for said tax year shall be disallowed. A notice of disallowance, on a form prescribed by the director, shall be mailed to that person by the collector on or before April 1 of the post-tax year or, where an extension of time for filing has been granted, no later than June 1, and his taxes to the extent represented by the amount of said deduction shall be payable on or before June 1 of the post-tax year or, where an extension of time for filing has been granted no later than 30 calendar days after the notice of disallowance was mailed, after which date if unpaid, said taxes shall be delinquent, constitute a lien on the property, and, in addition, the amount of said taxes shall be a personal debt of said person.

The amount of any lien and tax liability shall be prorated by the tax collector upon the transfer of title based on the number of days during the tax year that entitlement to the tax deduction is established. The lien shall be considered satisfied by the tax collector upon payment of the prorated amount for that portion of the tax year for which entitlement to the tax deduction is not established.

4. Section 10 of P.L.1983, c.315 (C.34:5A-10) is amended to read as follows:

C.34:5A-10 Retention of workplace surveys.

10. a. The Department of Health shall maintain a file of all completed workplace surveys received from employers. Each workplace survey received shall be retained by the department for 30 years. The department shall also retain for 30 years each hazardous substance fact sheet.

b. The department shall require every employer to update the workplace survey for his facility every five years, and shall supply each employer with any necessary additional hazardous substance fact sheets. If any additional workplace hazardous substance is present at the employer's facility during a non-reporting year that had not been previously reported, the employer shall inform the department and all other appropriate departments or entities which receive a copy of the completed survey as required pursuant to section 7 of P.L.1983, c.315 (C.34:5A-7) of the change no later than the July 15 following the change.

c. Upon request by the department, an employer shall provide the department with copies of employee health and exposure records, including those maintained for, and supplied to, the federal government.

d. Any person may request in writing from the department a copy of a workplace survey for a facility, together with the appropriate hazardous substance fact sheets, and the department shall transmit any material so requested within 30 days of the request therefor. Any request by an employee for material pertaining to the facility where he is employed made pursuant to this subsection shall be treated by the department as confidential.

5. Section 13 of P.L.1983, c.315 (C.34:5A-13) is amended to read as follows:

C.34:5A-13 Employee education, training program; certification of instructors.

13. a. Every employer shall have until October 30, 1985 to establish an education and training program for his employees, which shall be designed to inform employees in writing and orally of the nature of the hazardous substances to which they are exposed in the course of their employment and the potential health risks which the hazardous substances pose, and to train them in the proper and safe procedures for handling the hazardous substances under all circumstances. An employer shall provide his employees with the program not later than December 31, 1985, and every two years thereafter. Any person who becomes an employee after the conclusion of the initial program shall be provided with the program within the first month of employment. Prior to entering an employment agreement with a prospective employee an employer shall notify a prospective employee of the availability of workplace surveys and appropriate hazardous substance fact sheets for the facility at which the prospective employee will be employed; except that this notification requirement shall not be applicable to employers before December 31, 1985.

b. Any employer who has established an employee education and training program for hazardous substances prior to the effective date of this act may request the Department of Health to certify that education and training program, which certification shall constitute compliance with subsection a. of this section.

c. Every employer shall establish an education and training program for his employees who work in a research and development laboratory, which shall be designed to inform employees in writing and orally of the nature of the hazardous substances to which they are exposed in the course of their employment and the potential health risks which the hazardous substances pose, and to train them in the proper and safe procedures for handling the hazardous substances under all circumstances. An employer shall

provide his employees with the program not later than December 31, 1985, and every two years thereafter. Any person who becomes an employee after the conclusion of the initial program shall be provided with the program within the first month of employment.

d. The Department of Health shall establish a program for the certification of education and training programs provided to employers, for remuneration, for purposes of compliance with P.L.1983, c.315. The certification shall be valid for at least 12 months, shall provide for provisional and permanent certification, and shall be renewable.

e. The Department of Health shall establish a program for the certification of persons who are paid pursuant to the terms of a contract by employers to conduct education and training programs for purposes of compliance with P.L.1983, c.315. The certification shall be valid for at least 12 months, shall provide for provisional and permanent certification, and shall be renewable.

f. A person paid pursuant to the terms of a contract by an employer to conduct or provide an education and training program for purposes of compliance with P.L.1983, c.315 shall be required to be certified pursuant to subsection d. or e. of this section, as appropriate, prior to conducting or providing the program.

g. The fee for certification for a 12-month period and the fee for a renewal of a certification each shall not exceed $500.00. The fee for the certification and renewal shall be established pursuant to rules and regulations adopted by the Department of Health. All revenues from fees for the issuance or renewal of certifications shall be credited to the "Worker and Community Right to Know Fund" created pursuant to section 26 of P.L.1983, c.315. Applications for certification shall be made to the Commissioner of Health in the manner and on a form as the commissioner shall prescribe by rule or regulation.

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

i. Any person required to be certified by the Department of Health pursuant to this section who violates the provisions of subsection f. of this section, or any rule or regulation adopted pursuant thereto, shall be guilty of a disorderly persons offense.

j. The Commissioner of Health, upon making a finding that a person granted certification has violated any provision of this section or any rules or regulations adopted pursuant thereto, may revoke, suspend, or modify any certification issued pursuant to subsection d. or e. of this section. A person whose certification is to be revoked,

suspended, or modified pursuant to this subsection shall be entitled to a hearing, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to contest that action.

6. R.S.40:49-2 is amended to read as follows:

Procedure for passage.

40:49-2. Except as otherwise provided in R.S.40:49-6 and 40:49-12, the procedure for the passage of ordinances shall be as follows:

a. Every ordinance after being introduced and having passed a first reading, which first reading may be by title, shall be published in its entirety or by title at least once in a newspaper published and circulated in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality, together with a notice of the introduction thereof, the time and place when and where it will be further considered for final passage, a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, and the time and place when and where a copy of the ordinance can be obtained without cost by any member of the general public who wants a copy of the ordinance. If there be only one such publication the same shall be at least one week prior to the time fixed for further consideration for final passage. If there be more than one publication, the first shall be at least one week prior to the time fixed for further consideration for final passage.

b. At the time and place so stated in such publication, or at any time and place to which the meeting for the further consideration of the ordinance shall from time to time be adjourned, all persons interested shall be given an opportunity to be heard concerning the ordinance. The opportunity to be heard shall include the right to ask pertinent questions concerning the ordinance by any resident of the municipality or any other person affected by the ordinance. Final passage thereof shall be at least 10 days after the first reading.

c. Upon the opening of the hearing, the ordinance shall be given a second reading, which reading may be by title, and thereafter, it may be passed with or without amendments, or rejected. Prior to the said second reading, a copy of the ordinance shall be posted on the bulletin board or other place upon which public notices are customarily posted in the principal municipal building of the municipality, and copies of the ordinance shall be made available to members of the general public of the municipality who shall request such copies. If any amendment be adopted, sub-

stantially altering the substance of the ordinance, the ordinance as so amended shall not be finally adopted until at least one week thereafter, and the ordinance as amended shall be read at a meeting of the governing body, which reading may be by title, and shall be published in its entirety or by title, together with a notice of the introduction, the time and place when and where a copy of the amended ordinance can be obtained without any cost by any member of the general public who desires a copy, a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, and the time and place when and where the amended ordinance will be further considered for final passage, at least two days prior to the time so fixed. At the time and place so fixed, or at any other meeting to which the further consideration of the amended ordinance may be adjourned, the governing body may proceed to pass the ordinance, as amended, or again amend it in the same manner.

d. Upon passage, every ordinance, or the title, together with a notice of the date of passage or approval, or both, shall be published at least once in a newspaper circulating in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality. No other notice or procedure with respect to the introduction or passage of any ordinance shall be required.

Nothing herein shall be construed to affect the provisions of R.S.40:49-7 to 40:49-12 or R.S.40:49-27.

7. R.S.40:49-18 is amended to read as follows:

Filing of report; hearing; notice of hearing.

40:49-18. Upon the receipt of the report by the governing body, the same shall be filed by it, and it shall then, or at a subsequent regular meeting, fix a time and place when and where it will meet to consider all objections to the report or improvement which are presented in writing, and it shall cause the ordinance to be published in its entirety or by its title together with a notice of introduction, the time and place when and where a copy of the ordinance can be obtained without cost by any member of the general public who desires a copy, and a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, once in a newspaper published and circulating in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality, together with a notice of the introduction thereof, and of the filing of the map and report.

The notice shall contain a general description of the improvement intended, of the land to be taken, of the land to be assessed for the improvement, and of the awards made, and shall state the time and place when and where the governing body will meet to hear and consider any objections, to the report or to the improvement, which are presented in writing.

8. N.J.S.40A:4-6 is amended to read as follows:

Advertisement of budget.

40A:4-6. Every budget shall be advertised after approval. The advertisement shall contain a copy of the budget or a budget summary as provided in section 12 of P.L.1995, c.259 (C.40A:4-6.1), and shall set forth the date, the time and the place of the hearing. It shall be published at least 10 days prior to the date fixed therefor; in the case of a municipality, in a newspaper published and circulating in the municipality, if there be one, and if not, in a newspaper published in the county and circulating in the municipality; in the case of a county, in a newspaper published in the county seat, if there be one, and if not, in a newspaper published in the county and having a substantial circulation therein.

9. N.J.S.40A:4-8 is amended to read as follows:

Public hearing; time and place.

40A:4-8. The public hearing shall be held at the time and place specified in the advertisement thereof, but may be adjourned from time to time until the hearing is closed.

The budget shall be read, at the public hearing in full, or it may be read by its title, if

1. At least one week prior to the date of the hearing, a complete copy of the approved budget,

a. shall be made available for public inspection, in the case of a county budget, in each free public library, if any, in each municipality of the county and in the free county libraries or regional libraries of the county or, in the case of a municipal budget, in the free public library, if any, of the municipality and in the free county libraries or regional libraries located in the municipality or, if no county libraries or regional libraries are located in the municipality, the county or regional library of the county in which the municipality is located, and the public officer delegated the responsibility for delivering copies of the approved

budget to such libraries shall forward to the governing body an attestation that each such delivery was made, and

b. is made available to each person requesting the same, during said week and during the public hearing, and

2. The governing body shall, by resolution passed by not less than a majority of the full membership, determine that the budget shall be read by its title and declare that the conditions set forth in subsections 1.a. and 1.b. of this section have been met.

After closing the hearing, the governing body may adopt the budget, by title without amendments, or may approve amendments as provided in N.J.S.40A:4-9 before adoption.

10. N.J.S.40A:4-9 is amended to read as follows:

Amendments to budget.

40A:4-9. a. Amendments to budgets required by the director may be made prior to the time of holding the public hearing on the budget, without public advertisement.

b. The governing body may amend the budget during or after the public hearing. All amendments shall be read in full and shall be forthwith submitted to the director.

c. Except as provided in subsection e. of this section, no amendment by the governing body shall be effective until taxpayers and all persons having an interest therein shall have been granted a public hearing thereon, if such amendment shall:

1. add a new item of appropriation in an amount in excess of 1% of the total amount of appropriations as stated in the approved budget, or

2. increase or decrease any item of appropriation by more than 10%, or

3. increase the amount to be raised by taxes by more than 5%, unless the same is made to include an emergency temporary appropriation only.

Notice of hearing on any amendment shall be advertised at least three days before the date set therefor. Any such amendment must be published in full or by a summary pursuant to subsection d. of this section in the same manner as an original publication and must be read in full at the hearing and before adoption.

d. The governing body of a municipality or county may satisfy the publication requirements for an amendment by publishing a summary stating the main provisions of the amendment and the location, telephone number and office hours of the principal municipal or county building where copies of the amendment are

available and the name of the person or office to be contacted if a person wants to receive a copy of the amendment by mail. The summary shall be published in the manner provided in subsection b. of section 12 of P.L.1995, c.259 (C.40A:4-6.1).

e. Amendments to budgets required by the director after certification of State aid amounts, for the purpose of appropriating State aid revenue to be received by the municipality in the local budget year that may have the effect of reducing the amount required to be raised by taxation for local purposes, may be made without public advertisement or public hearing.

11. N.J.S.40A:4-10 is amended to read as follows:

Adoption of budget.

40A:4-10. No budget or amendment thereof shall be adopted unless the director shall have previously certified his approval thereof. Final adoption shall be by resolution adopted by a majority of the full membership of the governing body, and may be by title where the procedures required by sections 40A:4-8 and 40A:4-9 or section 12 of P.L.1995, c.259 (C.40A:4-6.1), as applicable, have been followed.

The budget shall be adopted in the case of a county not later than February 25, and in the case of a municipality not later than March 20 of the calendar fiscal year or September 20 of the State fiscal year, except that the governing body may adopt the budget at any time within 10 days after the director shall have certified his approval thereof and returned the same, if such certification shall be later than the date of the advertised hearing.

If, in the case of a municipality which operates on the State fiscal year, the governing body fails to adopt the budget within the permitted time, the chief financial officer of the local unit shall so notify the director the next working day after the expiration of the permitted time.

Three certified copies of the budget, as adopted, shall be transmitted to the director within three days after adoption.

Upon adoption, the budget shall constitute an appropriation for the purposes stated therein and an authorization of the amount to be raised by taxation for the purposes of the local unit.

C.40A:4-6.1 Satisfaction of advertisement of budget requirements.

12. The governing body of a municipality or county may satisfy the advertisement requirements for the introduction and passage of a budget in the following manner:

a. The publication of a summary pursuant to the provisions of N.J.S.40A:4-6 citing:

(1) The totals of the major sections of the budget, including but not limited to, operating expenses, capital improvement appropriations, salaries and wages, and surplus for the previous and current budget years;

(2) The amount of any principal and interest of any debt to be paid in the current budget year and the total amount of debt remaining;

(3) The total number of persons employed in the previous budget year and the total number estimated to be employed in the current budget year, the municipal purposes property tax levy of the previous budget year and the estimated municipal purposes property tax levy of the current budget year, the total amount to be raised by taxation and the total amount to be received from other sources in the current budget year, and the total appropriations of the previous year's budget and of the current year's budget; and

(4) The location, phone number and office hours of the principal municipal or county building where copies of the budget will be available to the public and the name of the person or the office to be contacted if a person wants to receive a copy of the budget by mail.

b. The name of the municipality or county and the budget title shall be printed in bold 16 point typeface and the remainder of the summary shall be printed in bold 8 point typeface.

13. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to read as follows:

C.34:11-56.26 Definitions.

2. As used in this act:

(1) "Department" means the Department of Labor of the State of New Jersey.

(2) "Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade.

(3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

(4) "Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

(5) "Public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract:

(a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

(b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

(6) "Commissioner" means the Commissioner of Labor or his duly authorized representatives.

(7) "Workman" or "worker" includes laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site.

(8) "Work performed under a rehabilitation program" means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.

(9) "Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

(10) "Act" means the provisions of P.L.1963, c.150 and the rules and regulations issued hereunder.

(11) "Prevailing wage contract threshold amount" means:

(a) In the case of any public work paid for in whole or in part out of the funds of a municipality in the State of New Jersey or done on property or premises leased or to be leased by the municipality, the dollar amount established for the then current calendar year by the commissioner through rules and regulations promul-

gated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which amount shall be equal to $9,850 on July 1, 1994 and which amount shall be adjusted on July 1 every five calendar years thereafter in direct proportion to the rise or fall in the average of the Consumer Price Indices for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made; and

(b) In the case of any public work other than a public work described in paragraph (a) of this subsection, an amount equal to $2,000.

14. Section 3 of P.L.1963, c.150 (C.34:11-56.27) is amended to read as follows:

C.34:11-56.27 Prevailing wage rate required in contract.

3. Every contract in excess of the prevailing wage contract threshold amount for any public work to which any public body is a party or for public work to be done on property or premises leased or to be leased by a public body shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workers employed in the performance of the contract and the contract shall contain a stipulation that such workers shall be paid not less than such prevailing wage rate. Such contract shall also contain a provision that in the event it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract the public body or lessor may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable to the public body or lessor for any excess costs occasioned thereby.

15. Section 3 of P.L.1947, c.156 (C.44:8-109) is amended to read as follows:

C.44:8-109 Public policy.

3. It is hereby declared to be the public policy of this State that every needy person shall, while in this State, be entitled to receive such public assistance as may be appropriate with reference to need of a category of persons and whether or not such

persons are employable, and that the funding of such public assistance is the responsibility of the State but that all needy persons not otherwise provided for under the laws of this State shall hereafter receive public assistance pursuant to law and the provisions of this act.

It is also the public policy of this State that there are two distinct categories of persons who may be eligible for financial assistance in accordance with the provisions of this act, those who are employable and those who are unemployable, as those terms are defined in section 2 of P.L.1947, c.156 (C.44:8-108). The commissioner may set differing levels of assistance for these categories.

16. Section 5 of P.L.1947, c.156 (C.44:8-111) is amended to read as follows:

C.44:8-111 Commissioner's duties.

5. The commissioner shall:

(a) Act as the agent of the State in effectuating the purposes of any reciprocal interstate agreements respecting the transportation of dependents;

(b) Negotiate with the Federal Government as to any present or future programs affecting public relief or assistance for which no provision is made by other statutes of this State and administer such programs in co-operation with the Federal Government or any agency thereof;

(c) Keep and maintain such records and accounts as may be necessary and proper for the administration of State aid;

(d) Promulgate, alter and amend from time to time such rules, regulations and directory orders as may be necessary for the administration of State aid and for the carrying out of any provisions of law regulating the same and of the provisions of this act, which rules, regulations and orders shall be binding upon the various municipalities or counties;

(e) Determine whether or not the various municipalities or counties are complying with all of the provisions of law, including the provisions of this act, regulating the administration of State aid which are binding upon them;

(f) Formulate, promulgate and enforce standards for investigation, allowance and supervision of grants for public assistance and forms and procedures necessary to the proper administration and recording thereof; and

(g) Exercise such other powers as may be necessary for the proper and efficient administration of State aid and the carrying out of all of the provisions of law, including the provisions of P.L.1947, c.156 (C.44:8-107 et seq.), regulating the same.

17. Section 6 of P.L.1947, c.156 (C.44:8-112) is amended to read as follows:

C.44:8-112 Powers of commissioner.

6. The commissioner may:

(a) Determine and prescribe the number and qualifications of the personnel employed or to be employed in administering public assistance in each of the municipalities or counties, as appropriate;

(b) Require the keeping of such records, and the making of such reports, by each municipality or county, as appropriate, in connection with the administration of State aid within such municipality or county, in such form, and containing such information, as he may from time to time determine, and make such investigations as he may from time to time deem to be necessary to assure the correctness and verification of the facts stated in such records and reports;

(c) Investigate the administration of public assistance within each municipality or county, as appropriate, and determine the compliance or noncompliance of such municipality or county with the provisions of law, including the provisions of P.L.1947, c.156 (C.44:8-107 et seq.), governing the administration of State aid for relief and with the standards and requirements prescribed by the department;

(d) Withhold payment of State aid from any municipality or county, as appropriate, neglecting or refusing to keep such records or make such reports or to comply with any of the standards and requirements prescribed by the department or with any provision of law governing the administration of State aid including the provisions of P.L.1947, c.156 (C.44:8-107 et seq.);

(e) Consult with and advise any local assistance board or other officials of any municipality, or any county welfare agency or other officials of any county, in connection with any public assistance problem in the municipality or county, as appropriate.

18. Section 7 of P.L.1947, c.156 (C.44:8-113) is amended to read as follows:

C.44:8-113 Administration as to municipalities or counties.

7. The commissioner may, as to each municipality or county in which public assistance is administered by the commissioner under P.L.1947, c.156 (C.44:8-107 et seq.),

(a) Prescribe all rules and conditions under which the funds allotted for State aid shall be administered;

(b) Require such information from applicants for public assistance, make such investigation of the merits of applications for public assistance, prescribe such forms to be used, and set up, maintain and carry out such procedures as may in his discretion be deemed advisable for the economical and efficient administration of public assistance in the municipality or county;

(c) Make direct distribution of sums allotted as State aid in the municipality or county as provided by P.L.1947, c.156 (C.44:8-107 et seq.); and

(d) Use all or any part of the local or county organization for administration of public assistance to assist him, upon such terms as he may deem fit and proper.

19. Section 8 of P.L.1947, c.156 (C.44:8-114) is amended to read as follows:

C.44:8-114 Administration and funding of public assistance.

8. The State shall provide, through each municipality or county, as appropriate, public assistance to the persons eligible therefor, residing therein or otherwise when so provided by law, which assistance shall be fully funded by the State and administered by a local assistance board or the county welfare agency according to law and in accordance with P.L.1947, c.156 (C.44:8-107 et seq.) and with such rules and regulations as may be promulgated by the commissioner.

An employable person who is receiving public assistance shall be required, except when good cause exists, to enroll and actively participate in the Family Development Initiative established pursuant to P.L.1991, c.523 (C.44:10-19 et al.).

The commissioner may exempt a person from participating in the program for reasons of physical or mental impairment, age, illness or injury, caretaker responsibilities, employment or unsuitability, as determined by the commissioner, for the services provided by the program.

Each person receiving public assistance who is required to participate in the Family Development Initiative shall receive a health-related, social, educational and vocational assessment and those services, as appropriate, which are provided to other participants in that program pursuant to P.L.1991, c.523 (C.44:10-19 et al.).

Any person who without good cause fails or refuses to enroll and actively participate in the Family Development Initiative, which includes failure to attend or make satisfactory academic

progress in educational or vocational training classes under the program, including classes in four-year and community colleges and post-secondary vocational training programs, according to rules and regulations adopted by the commissioner, shall thereupon, as determined by the commissioner, be subject to a reduction in benefits of at least 20%, or shall become ineligible for public assistance for a period of at least 90 days, which shall commence at the end of the current benefit period and at the end of which the person shall again become eligible for public assistance; provided that he complies with all requirements of the Family Development Initiative as determined by the commissioner or shows his willingness to do so. For a subsequent failure or refusal to enroll and actively participate in the program without good cause, the person may be subject to a termination of benefits.

20. Section 12 of P.L.1947, c.156 (C.44:8-118) is amended to read as follows:

C.44:8-118 Duties of welfare director.

12. The director of welfare of each municipality shall as to that municipality, or the county welfare director shall as to that county, as appropriate:

(a) Supervise by periodic investigation every person receiving public assistance, such investigation to be made by visitation at least once a month;

(b) Reconsider from month to month the amount and nature of public assistance given and alter, amend or suspend the same when the circumstances so require;

(c) Devise ways and means for bringing persons unable to maintain themselves to self-support or to the support of any other person or agency able and willing so to do;

(d) Keep full and complete records of such investigation, supervision, assistance and rehabilitation, and of all certifications of persons for employment or benefits and cancellations thereof, in such manner and form as required by the commissioner; and

(e) Bring about appropriate action for commitment to any State or county institution when the best interests of the needy persons would be so served.

21. Section 13 of P.L.1947, c.156 (C.44:8-119) is amended to read as follows:

C.44:8-119 Applicant's affidavit.

13. Each applicant for public assistance in any municipality or county shall be required to make an affidavit to the correctness of his or her statements in his or her application for relief.

22. Section 14 of P.L.1947, c.156 (C.44:8-120) is amended to read as follows:

C.44:8-120 Immediate assistance.

14. Immediate public assistance shall be rendered promptly to any needy person by the director of welfare of the municipality or the county welfare director, as appropriate, where the person is found at the time of application. Needy persons residing in public or private facilities providing residential therapeutic medical services shall be deemed the responsibility of the municipality or county, as appropriate, of their customary place of abode prior to placement in such facility.

23. Section 15 of P.L.1947, c.156 (C.44:8-121) is amended to read as follows:

C.44:8-121 Inquiry by director.

15. When a person shall apply for public assistance for himself or his dependents, the municipal or county director of welfare, as appropriate, shall inquire into the facts, conditions and circumstances of the case, including customary place of abode, family connections, living conditions, resources, income, and causes direct and indirect of the person's need, and such other matters as the commissioner may require, making a written record thereof in such manner as may be prescribed by the commissioner. Upon ascertainment of the foregoing facts, conditions and circumstances, the municipal or county director of welfare, as appropriate, shall render assistance to an eligible applicant or his dependents. The cost of public assistance shall be borne by the State.

24. Section 19 of P.L.1947, c.156 (C.44:8-125) is amended to read as follows:

C.44:8-125 Deductions from public assistance.

19. The fact that an applicant for public assistance or any of his dependents shall be receiving, or entitled to receive, income from other sources or compensation for part-time or casual services shall not make such person ineligible to receive public assistance if such income or compensation is insufficient to support him and his dependents properly but the amount of such income or com-

pensation shall be taken into consideration in determining the amount of his public assistance by deducting from the amount of public assistance which he otherwise would be entitled to receive, the amount of such income or compensation; except that any money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange" shall not reduce the amount of public assistance received by the applicant and shall not be subject to a lien or be available for repayment to the State, county or municipality for public assistance received by the applicant.

25. Section 23 of P.L.1947, c.156 (C.44:8-129) is amended to read as follows:

C.44:8-129 Determining amount of State aid.

23. In each year the commissioner shall determine the amount of State aid which each municipality or county, as appropriate, shall receive in such year, and the same shall be distributed by the commissioner among the various municipalities and counties making application therefor to the commissioner before July 1 of such year, except those in which public assistance shall be administered by the commissioner for all or any part of such year, by the payment to each municipality or county of 100% of its "current year's public assistance load."

26. Section 31 of P.L.1947, c.156 (C.44:8-137) is amended to read as follows:

C.44:8-137 Municipality or county to pay cost of administration.

31. The cost of administration of public assistance within any municipality or county, as appropriate, shall be paid by that municipality or county, as appropriate, and no part thereof shall be paid by the State except as provided in section 28 of P.L.1947, c.156 (C.44:8-134).

27. Section 4 of P.L.1976, c.68 (C.40A:4-45.4) is amended to read as follows:

C.40A:4-45.4 Limitation on increase in county tax levies over previous year; exceptions.

4. In the preparation of its budget, a county may not increase the county tax levy to be apportioned among its constituent municipalities in excess of 5% or the index rate, whichever is less, of the previous year's county tax levy, subject to the following exceptions:

a. The amount of revenue generated by the increase in valuations within the county, based solely on applying the preceding year's county tax rate to the apportionment valuation of new construction or improvements within the county, and such increase shall be levied in direct proportion to said valuation;

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditures would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the county, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, P.L.1990, c.89.)

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or f. below;

d. All debt service;

e. (Deleted by amendment, P.L.1990, c.89.)

f. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a county and any other county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political subdivision of this State; and (2) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part;

g. That portion of the county tax levy which represents funding to participate in any federal or State aid program and amounts received or to be received from federal, State or other funds in reimbursement for local expenditures. If a county provides match-

ing funds in order to receive the federal or State or other funds, only the amount of the match which is required by law or agreement to be provided by the county shall be excepted;

h. (Deleted by amendment, P.L.1987, c.74.)

i. (Deleted by amendment, P.L.1990, c.89.)

j. (Deleted by amendment, P.L.1990, c.89.)

k. (Deleted by amendment, P.L.1990, c.89.)

l. Amounts expended to meet the standards established pursuant to the "New Jersey Public Employees' Occupational Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

m. (Deleted by amendment, P.L.1990, c.89.)

n. (Deleted by amendment, P.L.1990, c.89.)

o. (Deleted by amendment, P.L.1990, c.89.)

p. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

q. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

r. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

s. That portion of the county tax levy which represents funding to a county college in excess of the county tax levy required to fund the county college in local budget year 1992;

t. Amounts appropriated for the cost of administering a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but not including appropriations for claims payments by local member units;

u. Expenditures for the administration of general public assistance pursuant to P.L.1995, c.259 (C.40A:4-6.1 et al.).

C.44:8-145.1 Transfer from municipal to county welfare agency.

28. a. A municipality may, by mutual agreement with the county in which it is located, provide for the transfer from its municipal welfare agency to the county welfare agency of the financial and operational responsibility for the administration of general public assistance provided pursuant to P.L.1947, c.156 (C.44:8-107 et seq.) to residents of that municipality. In that event, the municipal welfare agency shall be abolished and all its functions, powers and

duties transferred to the county welfare agency no later than the 60th day after the effective date of the transfer.

C.44:8-145.2 Appointment of assistant county welfare director.

29. Each county welfare director may appoint a person to serve as assistant county welfare director for general public assistance or to another supervisory position to be responsible for the administration of general public assistance in that county.

C.44:8-145.3 Allocation of functions, powers, and duties.

30. The county welfare director of each county is authorized to allocate the functions, powers and duties of each municipal welfare agency in the county transferred pursuant to P.L.1995, c.259 (C.40A:4-6.1 et al.) among the existing offices in the county welfare agency.

C.44:8-145.4 Employees transferred, remuneration, service intact; provision of services to municipal agency permitted.

31. a. A person who is a full-time employee of a municipal welfare agency, or who works on a full-time basis for municipal welfare agencies in two or more municipalities, on the effective date of P.L.1995, c.259 (C.40A:4-6.1 et al.) who is transferred to the county welfare agency of the county in which the municipality is located pursuant to section 28 of P.L.1995, c.259 (C.44:8-145.1), shall suffer no reduction in remuneration or the length of service credited to that employee.

b. A county and municipality may arrange, subject to mutual agreement, for one or more former municipal welfare agency employees who are employed by the county welfare agency to continue to provide services from a municipal building.

C.44:8-145.5 Rules, regulations.

32. 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 section 16 through section 32 of P.L.1995, c.259 (C.44:8-111 through C.44:8-145.5).

33. Section 4 of P.L.1988, c.90 (C.58:25-26) is amended to read as follows:

C.58:25-26 Monitoring of water quality.

4. a. A municipality, upon completion of the map required pursuant to section 3 of P.L.1988, c.90 (C.58:25-25), shall provide for the monitoring of the water quality at the outfall lines for any stormwater sewers discharging into salt waters in the following manner:

(1) For priority outfall lines, monitoring shall be conducted twice each year; and

(2) For those outfall lines other than priority outfall lines, monitoring shall be conducted annually.

b. The water tests shall monitor for the presence of fecal coliform or other contaminants that may result from a sewer line break or an improper or illegal connection to a stormwater sewer line. If fecal coliform or other contaminants are found to exceed the standards therefor established pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), the municipality shall identify the person responsible for, and promptly abate or seek the abatement of, the contamination. The results of any water test which monitors for the presence of fecal coliform or other contaminants shall be reported to the Department of Environmental Protection in such manner as shall be required by the department.

c. "Priority outfall line" shall be defined by the Department of Environmental Protection pursuant to regulations adopted by the department.

d. Beginning February 1, 1995, and annually thereafter, the department, pursuant to the regulations developed to define a "priority outfall" pursuant to subsection c. of this section, shall submit a report to the Legislature that lists the priority outfalls. This list shall include the municipality in which the outfall is located, the location of the outfall and the waterbody into which the outfall discharges.

34. Section 23 of P.L.1987, c.156 (C.13:9B-23) is amended to read as follows:

C.13:9B-23 General permits.

23. a. The department shall consider for adoption as general permits, to the extent practicable and feasible, and to the extent that this adoption is consistent to the maximum extent practicable and feasible with the provisions of P.L.1987, c.156 (C.13:9B-1 et seq.), all applicable Nationwide Permits which were approved under the Federal Act as of November 13, 1986 by the U.S. Army Corps of Engineers.

b. The department shall issue a general permit for an activity in a freshwater wetland which is not a surface water tributary system discharging into an inland lake or pond, or a river or stream, and which would not result in the loss or substantial modification of more than one acre of freshwater wetland, provided that this activity will not take place in a freshwater wetland of exceptional resource value. The department shall issue a general permit for a

regulated activity in a freshwater wetland located in an area considered a headwater pursuant to the Federal Act if the regulated activity would not result in the loss or substantial modification of more than one acre of a swale or a man-made drainage ditch. The provisions of this subsection shall not apply to any wetlands designated as priority wetlands by the United States Environmental Protection Agency.

c. The department shall issue additional general permits on a Statewide or regional basis for the following categories of activities, if the department determines, after conducting an environmental analysis and providing public notice and opportunity for a public hearing, that the activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands, will be in conformance with the purposes of P.L.1987, c.156 (C.13:9B-1 et seq.), and will not violate any provision of the Federal Act:

(1) Maintenance, reconstruction, or repair of roads or public utilities lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that such activities do not result in disturbance of additional wetlands upon completion of the activity;

(2) Maintenance or repair of active irrigation or drainage ditches lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that such activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;

(3) Appurtenant improvements or additions to residential dwellings lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.), provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and will not result in new alterations to a freshwater wetland outside of the fill area;

(4) Mosquito management activities determined to be consistent with best mosquito control and freshwater wetlands management practices and for which all appropriate actions to minimize adverse environmental effects have been or shall be taken. Notwithstanding any law, rule, or regulation to the contrary, if the department requires public notice to be given prior to the undertaking of mosquito management activities pursuant to a general permit, a permittee that is a county or municipality or county or municipal entity shall be given the option of complying with that requirement by publication of a display advertisement of at least four column

inches in size in at least one newspaper of local circulation and one of regional circulation within the county or municipality;

(5) Activities, as determined by the department, which will have no significant adverse environmental impact on freshwater wetlands, provided that the issuance of a general permit for any such activities is consistent with the provisions of the Federal Act and has been approved by the United States Environmental Protection Agency;

(6) Regulated activities which have received individual or general permit approval or a finding of no jurisdiction by the U.S. Army Corps of Engineers pursuant to the Federal Act, and which have received a grant waiver pursuant to the "National Environmental Policy Act of 1969" (42 U.S.C. §4321 et seq.); provided, that upon the expiration of a permit any application for a renewal or modification thereof shall be made to the department;

(7) State or federally funded roads planned and developed in accordance with the "National Environmental Policy Act of 1969" and the Federal Act, and with Executive Order Number 53, approved October 5, 1973 and for which application has been made prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) to the United States Army Corps of Engineers for an individual or general permit under the Federal Act; provided that upon expiration of a permit any application for a renewal or modification thereof shall be made to the department, and, provided, further, that the department shall not require transition areas as a condition of the renewal or modification of the permit;

(8) Maintenance and repair of stormwater management facilities lawfully constructed prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;

(9) Maintenance, reconstruction, or repair of buildings or structures lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity.

d. The department may, on the basis of findings with respect to a specific application, modify a general permit issued pursuant to this section by adding special conditions. The department may rescind a general permit and require an application for an individual permit if the commissioner finds that additional permit conditions would not be sufficient and that special circumstances

make this action necessary to insure compliance with P.L.1987, c.156 (C.13:9B-1 et seq.) or the Federal Act.

e. The department shall review general permits adopted or authorized pursuant to subsection c. every five years, which review shall include public notice and opportunity for public hearing. Upon this review the department shall either modify, reissue or revoke a general permit. If a general permit is not modified or reissued within five years of publication in the New Jersey Register, it shall automatically expire.

f. The date of publication of the general permits authorized by subsections a. and b. of this section shall be the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.).

g. A person proposing to engage in an activity covered by a general permit shall provide written notice to the department containing a description of the proposed activity at least 30 working days prior to commencement of work. The department, within 30 days of receipt of this notification, shall notify the person proposing to engage in the activity covered by a general permit as to whether an individual permit is required for the activity.

35. Section 1 of P.L.1991, c.176 (C.40A:14-179) is amended to read as follows:

C.40A:14-179 Base salaries of police chief, deputy chief.

1. Notwithstanding any other law to the contrary whenever there is a police department organized in any political subdivision of this State and a chief of police appointed to be the executive head of such department, the starting base salary of said chief of police and the deputy chief shall be set at a rate that is higher than the highest base salary of the ranking police officer next in command below the chief of police or deputy chief of police as appropriate. Thereafter, whenever new base salary ranges are set by the governing body or appointive authority, unless the chief of police or deputy chief shall consent to a lesser adjustment, the base salary for the chief of police and his deputy chief shall be adjusted to ensure that their base salaries remain higher than the base salaries of other ranking supervisory officers in the department.

C.52:14-17.31a Municipal employee permitted to waive benefits coverage under State Health Benefits Program.

36. Notwithstanding the provisions of any other law to the contrary, a municipality which participates in the State Health Benefits Program, established pursuant to P.L.1961, c.49

(C.52:14-17.25 et seq.), may allow any employee who is eligible for coverage as a dependent of the employee's spouse under that program or under another health benefits plan offered by the spouse's employer, whether a public or private employer, to waive coverage under the State Health Benefits Program to which the employee is entitled by virtue of employment with the municipality. The waiver shall be in such form as the Director of the Division of Pensions and Benefits shall prescribe and shall be filed with the division. After such waiver has been filed and for so long as that waiver remains in effect, no premium shall be required to be paid by the municipality for the employee or the employee's dependents. Not later than the 180th day after the date on which the waiver is filed, the division shall refund to the municipality the amount of any premium previously paid by the municipality with respect to any period of coverage which followed the filing date. In consideration of filing such a waiver, a municipality may pay to the employee annually an amount, to be established in the sole discretion of the municipality, which shall not exceed 50% of the amount saved by the municipality because of the employee's waiver of coverage. An employee who waives coverage shall be permitted to immediately resume 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 from the municipality which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall notify the municipality in writing and file a declaration with the division, in such form as the director of the division shall prescribe, that the waiver is revoked. The decision of a municipality 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.40A:10-17.1 Municipal 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 municipality 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 municipality's plan to which the employee is entitled by virtue of employment with the municipality. The waiver shall be in such form as the munici-

pality shall prescribe and shall be filed with the municipality. In consideration of filing such a waiver, a municipality may pay to the employee annually an amount, to be established in the sole discretion of the municipality, which shall not exceed 50% of the amount saved by the municipality 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 municipality, in such form as the municipality shall prescribe, that the waiver is revoked. The decision of a municipality 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.

38. Section 8 of P.L.1953, c.438 (C.App.A:9-40.1) is amended to read as follows:

C.App.A:9-40.1 Municipal emergency management coordinator.

8. In every municipality of this State the mayor or, in the case of a municipality which has adopted the commission form of government pursuant to the provisions of the "commission form of government law" (R.S.40:70-1 et seq.), the commissioner serving as director of the department to which the responsibility for emergency management coordinator from among the residents of the municipality. The municipal emergency management coordinator, subject to fulfilling the requirements of this section, shall serve for a term of three years. As a condition of his appointment and his right to continue for the full term of his appointment, each municipal emergency management coordinator shall have successfully completed at the time of his appointment or within one year immediately following his appointment or the effective date of this act, whichever is later, the current approved Home Study Course and the basic Emergency Management workshop. The failure of any municipal emergency management coordinator to fulfill such requirement within the period prescribed shall disqualify the coordinator from continuing in the office of coordinator and thereupon a vacancy in said office shall be deemed to have been created.

The provisions of this section shall not bar a municipality from entering into an agreement pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) to designate (1) a municipal emergency management coordinator to serve two or more municipalities jointly, or (2) the county emergency management coordinator appointed pursuant to section 12 of P.L.1953, c.438 (C.App.A:9-42.1) for the county in which that municipality is located as the municipal emergency management coordinator, subject to approval of the governing body of the county. A municipality entering into such an agreement shall notify the State Emergency Management Coordinator.

39. This act shall take effect immediately, except that sections 1 through 3 shall become effective for tax years 1997 and thereafter; and sections 10 and 11 shall apply to ordinances introduced after the effective date of this act.

Approved November 13, 1995.

CHAPTER 260

AN ACT creating the Historic New Bridge Landing Park Commission and supplementing Title 13 of the Revised Statutes.

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

C.13:15B-1 Historic New Bridge Landing Park Commission created.

1. a. The Historic New Bridge Landing Park Commission, a body corporate and politic with corporate succession, is created in the Division of Parks and Forestry of the Department of Environmental Protection. The commission is an instrumentality exercising public and essential governmental functions. Exercise by the commission of the powers conferred by this act is deemed to be an essential governmental function of the State.

b. The commission shall consist of the following nine members: the Director of the Division of Parks and Forestry or the director's designee; one representative each from the County of Bergen, the Blauvelt-Demarest Foundation, River Edge Borough, and New Milford Borough; and two representatives each from the Bergen County Historical Society and Teaneck Township. Members of the commission shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties. The members of the commission shall elect annually a chairman and vice-chairman from their number, and a secretary and treasurer who need not be members of the commission. The same person may be elected to serve both as secretary and treasurer. The chairman of the commission shall be its presiding officer and the vice-chairman shall serve as chairman in the absence of the chairman. The commission shall organize and adopt procedures for the conduct of its business. Five members of the commission shall constitute a quorum and the concurrence of five members of the commission shall be necessary to validate all acts of the commission.

C.13:15B-2 Objectives, jurisdiction of commission.

2. a. The Historic New Bridge Landing Park Commission shall coordinate and implement federal, State, county, municipal, and private development policies and other activities relating to the historic preservation and recreational use of the property under the commission's jurisdiction.

b. The commission has jurisdiction over the area in Bergen County known as New Bridge Landing, in the Borough of River Edge, between Main Street and Hackensack Avenue and extending into Teaneck Township and the Borough of New Milford, the area being situated along the banks of the Hackensack River.

C.13:15B-3 Powers of commission.

3. The Historic New Bridge Landing Park Commission shall have the following powers:

a. To sue and be sued in its own name, but the members of the commission shall be held harmless for acts performed in good faith;

b. To adopt a seal and alter the same at its pleasure;

c. To adopt bylaws for the regulation of its affairs and the conduct of its business;

d. To maintain an office or offices at such place or places within the State as it may designate;

e. To appoint officers, who need not be members of the commission, in addition to a secretary and a treasurer, as the commission deems advisable, and to employ other employees and

agents as may be necessary or desirable in its judgment, to fix their compensation, and to promote and discharge officers, employees and agents all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;

f. To acquire in the name of the commission, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

g. To make, enter into, and perform all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

h. To request the State Historic Preservation Officer to place the lands and buildings under the commission's jurisdiction on the National Register of Historic Places pursuant to the "National Historic Preservation Act," Pub.L.89-665 (16 U.S.C.§470 et al.), as amended and supplemented by the "National Historic Preservation Act Amendments of 1980," Pub.L.96-515, and the "National Historic Preservation Act Amendments of 1992," Pub.L.102-575, or any future amendments or supplements thereto;

i. To acquire and hold real and personal property by gift, purchase, devise, bequest, or by other means and to preserve and administer these properties;

j. To conduct public information and education programs relating to the historic nature of the property under the commission's jurisdiction;

k. To apply to the Department of Environmental Protection for grants from the Green Acres or historic preservation bond programs or other appropriate funding sources, for the purpose of acquisitions pursuant to subsection f. of this section or for the purposes of development, preservation, or maintenance of those acquired properties; and

l. To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

C.13:15B-4 Specific power of commission.

4. The Historic New Bridge Landing Park Commission has the specific power to contract for the construction, reconstruction, restoration, or maintenance of all lands, buildings, landscaping, bridges, docks, and facilities under its jurisdiction including the maintenance, restoration, and reconstruction of the Steuben House, the Demarest House, the Campbell-Christie House, the Westervelt-Thomas Barn and the construction and operation of a visitor center, library, mill site, curator's residence, parking area, and other appropriate structures.

5. This act shall take effect immediately.

Approved November 13, 1995.

CHAPTER 261

AN ACT concerning certain rating organizations and advisory organizations and amending P.L.1990, c.8.

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

1. Section 69 of P.L.1990, c.8 (C.17:33B-31) is amended to read as follows:

C.17:33B-31 Use of rating or advisory organization for collection, compilation and dissemination of historical data; factors for coverage; etc.

69. Notwithstanding the provisions of Subtitle 3 of Title 17 of the Revised Statutes or any other provision of law to the contrary, no insurer shall use recommendations relating to private passenger automobile insurance rates made by a rating organization or advisory organization that include expenses, other than loss adjustment expenses, or profit. A rating organization or advisory organization may:

a. collect, compile and disseminate historical data for two or more insurers;

b. develop, revise, disseminate and file:

(1) model year, vehicle series and symbol programs and factors for comprehensive and collision coverages;

(2) policy forms and endorsements;

(3) classifications, including, but not limited to, territorial definitions;

(4) policy writing rules and rating rules that include factors and relativities, such as increased limits factors, classification and territorial relativities, deductible discounts and relativities or similar factors;

(5) manuals; and

(6) prospective loss costs, including trend, loss development and all loss adjustment expenses;

c. participate in any study of the auto insurance system in New Jersey; and

d. furnish any other services approved or authorized by the commissioner.

An insurer may use information provided by a rating organization or advisory organization pursuant to subsections a. through d. of this section. If an insurer files to alter, supplement or amend its rates or rating systems by incorporating, by reference, prospective loss costs filed by a rating organization or advisory organization, the commissioner may require the insurer to furnish its loss experience. No rating organization or advisory organiza-

tion shall require or make an agreement to require the use of any data, policy forms, rule, prospective loss cost, manual, symbol or endorsement by any insurer.

2. This act shall take effect immediately.

Approved November 13, 1995.

CHAPTER 262

AN ACT concerning the practice of manicuring and amending P.L.1984, c.205.

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

1. Section 3 of P.L.1984, c.205 (C.45:5B-3) is amended to read as follows:

C.45:5B-3 Definitions.

3. As used in this act:

a. "Barber" means any person who is licensed to engage in any of the practices encompassed in barbering.

b. "Barbering" means any one or combination of the following practices when done on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or when done without payment for the general public:

(1) shaving or trimming of the beard, mustache or other facial hair;

(2) shampooing, cutting, arranging, relaxing or styling of the hair;

(3) singeing or dyeing of the hair;

(4) applying cosmetic preparations, antiseptics, tonics, lotions or creams to the hair, scalp, face or neck;

(5) massaging, cleansing or stimulating the face, neck or scalp with or without cosmetic preparations, either by hand, mechanical or electrical appliances; or

(6) cutting, fitting, coloring or styling of hairpieces or wigs, to the extent that the services are performed while the wig is being worn by a person.

c. "Beautician" means any person who is licensed to engage in any of the practices encompassed in beauty culture.

d. "Beauty culture" means any one or combination of the following practices when done on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or when done without payment for the general public:

(1) shampooing, cutting, arranging, dressing, relaxing, curling, permanent waving or styling of the hair;

(2) singeing, dyeing, tinting, coloring, bleaching of the hair;

(3) applying cosmetic preparations, antiseptics, tonics, lotions, creams or makeup to the hair, scalp, face, neck or upper part of the body;

(4) massaging, cleansing, or stimulating the face, scalp, neck or upper part of the body, with or without cosmetic preparations either by hand, mechanical or electrical appliances;

(5) removing superfluous hair from the face, neck, arms, legs or abdomen by the use of depilatories, waxing or tweezers, but not by the use of electrolysis;

(6) manicuring the fingernails, nail-sculpturing or pedicuring the toenails; or

(7) cutting, fitting, coloring or styling of hairpieces or wigs to the extent that the services are performed while the wig is being worn by a person.

e. "Board" means New Jersey State Board of Cosmetology and Hairstyling.

f. "Board of Barber Examiners" means the State Board of Barber Examiners established pursuant to P.L.1938, c.197 (C.45:4-27 et seq.).

g. "Board of Beauty Culture Control" means the Board of Beauty Culture Control established pursuant to Chapter 4A of Title 45 of the Revised Statutes.

h. "Clinic" means a designated portion of a licensed school in which members of the general public may receive cosmetology or hairstyling services from registered students in exchange for a fee which shall be calculated to recoup only the cost of materials used in the performance of those services.

i. "Cosmetologist-hairstylist" means any person who is licensed to engage in the practices encompassed in cosmetology and hairstyling.

j. "Cosmetology and hairstyling" means any one or combination of the following practices when done on the human body for cosmetic purposes and not for the treatment of disease or physical

or mental ailments and when done for payment either directly or indirectly or when done without payment for the general public:

(1) shaving or trimming of the beard, mustache or other facial hair;

(2) shampooing, cutting, arranging, dressing, relaxing, curling, permanent waving or styling of the hair;

(3) singeing, dyeing, tinting, coloring, bleaching of the hair;

(4) applying cosmetic preparations, antiseptics, tonics, lotions, creams or makeup to the hair, scalp, face or neck;

(5) massaging, cleansing or stimulating the face, neck or upper part of the body, with or without cosmetic preparations, either by hand, mechanical or electrical appliances;

(6) removing superfluous hair from the face, neck, arms, legs or abdomen by the use of depilatories, waxing or tweezers, but not by the use of electrolysis;

(7) manicuring the fingernails, nail-sculpturing or pedicuring the toenails;

(8) cutting, fitting, coloring or styling of hairpieces or wigs to the extent that the services are being performed while the wig is being worn by a person; or

(9) hairweaving to the extent that the procedure does not involve the replacement of human hair by means of the insertion of any natural or synthetic fiber hair into the scalp.

k. "Manicurist" means a person who holds a limited license to engage in only the practice of manicuring.

l. "Manicuring" means any one or combination of the following practices when done on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment directly or indirectly or when done without payment for the general public:

(1) manicuring of the fingernails;

(2) pedicuring of the toenails;

(3) nail sculpturing; or

(4) removing superfluous hair from the face, neck, arms, legs or abdomen by the use of depilatories, waxing or tweezers, but not by the use of electrolysis.

m. "Owner" means any person, corporation, firm or partnership who has a financial interest in a school or shop entitling him to participate in the promotion, management and proceeds thereof. It does not include a person whose connection with a school or shop entitles him only to reasonable salary or wages for services actually rendered.

n. "Practicing licensee" means any person who holds a license to practice barbering, beauty culture, cosmetology and hairstyling, manicuring or as a skin care specialist.

o. "Registered student" means a person who is engaged in learning and acquiring a knowledge of any of the practices included in the definition of cosmetology and hairstyling under the direction and supervision of a person duly authorized under this act to teach cosmetology and hairstyling and who is enrolled in a program of instruction at a licensed school of cosmetology and hairstyling, completion of which may render him eligible for licensure pursuant to this act but does not mean a person who is enrolled in a public school vocational program in cosmetology and hairstyling approved by the State Board of Education.

p. "Registration card" means a document issued by the board to a registered student upon receipt of documentation from a licensed school of cosmetology and hairstyling that the student is enrolled.

q. "School" means an establishment or place licensed by the board to be maintained for the purpose of teaching cosmetology and hairstyling to registered students.

r. "Senior student" means a registered student who has successfully completed 600 hours of instruction in a cosmetology and hairstyling program, 100 hours of instruction in a manicuring program or 300 hours of instruction in a skin care specialty program offered at a licensed school of cosmetology and hairstyling or a student enrolled in an approved vocational training program who has completed 600 hours of instruction in a cosmetology and hair styling program, 100 hours of instruction in a manicuring program or 300 hours of instruction in a skin care specialty program.

s. "Student permit" means a permit issued to a senior student which enables him to practice cosmetology and hairstyling in a school clinic or shop while a registered student at a licensed school of cosmetology and hairstyling or enrolled in an approved vocational training program.

t. "Shop" means any fixed establishment or place where one or more persons engage in one or more of the practices included in the definition of cosmetology or hairstyling, barbering, beauty culture or manicuring.

u. "Teacher" means any person who is licensed by the board to give instruction or training in the theory or practice of cosmetology and hairstyling.

v. "Temporary permit" means a permit issued to applicants for licensure awaiting scheduling or results of an examination.

w. "Manicurist student permit" means a permit issued to a senior student in a manicuring program which enables him to practice manicuring in a school clinic or shop while a registered student at a licensed school of cosmetology and hairstyling or enrolled in an approved vocational program.

x. "Skin care specialist" means a person who holds a limited license to engage in only the practices included in the definition of skin care specialty.

y. "Skin care specialty" means any one or combination of the following practices when done on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when performed for payment either directly or indirectly or when performed without payment for the general public:

(1) applying cosmetic preparations, antiseptics, tonics, lotions, creams or makeup to the scalp, face or neck;

(2) massaging, cleansing or stimulating the face, neck or upper part of the body, with or without cosmetic preparations, either by hand, mechanical or electrical appliances; or

(3) removing superfluous hair from the face, neck, arms, legs or abdomen by the use of depilatories, waxing or tweezers, but not by the use of electrolysis.

z. "Skin care specialty student permit" means a permit issued to a senior student in a skin care specialty program which enables him to practice skin care in a school clinic or shop while a registered student at a licensed school of cosmetology and hairstyling or enrolled in an approved vocational program.

2. This act shall take effect on the 60th day following enactment.

Approved November 15, 1995.

CHAPTER 263

AN ACT concerning replevin, supplementing Title 2B of the New Jersey Statutes, and repealing N.J.S.2A:59-1 through N.J.S.2A:59-19 inclusive.

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

1. An additional chapter, chapter 50, is added to Title 2B of the New Jersey Statutes as follows:

TITLE 2B
CHAPTER 50. REPLEVIN

Action for replevin.

2B:50-1. Action for Replevin. A person seeking recovery of goods wrongly held by another may bring an action for replevin in the Superior Court. If the person establishes the cause of action, the court shall enter an order granting possession.
Source: N.J.S.2A:59-3.

Temporary relief; on notice.

2B:50-2. Temporary Relief; On Notice. If the court, after notice and hearing, and based upon filed papers and testimony, if any, finds a probability of final judgment for the plaintiff, it may, prior to final judgment:

a. grant possession of the goods to the plaintiff; or

b. order other just relief.

Source: New.

Temporary relief; without notice.

2B:50-3. Temporary Relief; Without Notice. In an extraordinary case if, before notice and hearing, the court finds from specific facts in an affidavit or verified complaint that the plaintiff is entitled to possession and that an immediate order is necessary to prevent removal of, or irreparable damage to, the goods, the court without notice, may:

a. direct a person authorized by the court to remove the goods from the party in possession and hold them pending a hearing; or

b. order necessary temporary restraints to preserve the goods pending a hearing.

Source: New.

Security.

2B:50-4. Security. As part of an order that determines who shall hold the goods pending judgment, the court may further order the holder to give security.
Source: N.J.S.2A:59-5, 2A:59-6.

Unrelinquished property.

2B:50-5. Unrelinquished property. If the court orders a person to relinquish goods and the person does not relinquish them, the court shall enter an order in aid of execution, or if the plaintiff so requests, assess damages.
Source: N.J.S.2A:59-4.

Repealer.

2. The following statutes are repealed:
N.J.S.2A:59-1 through 2A:59-19 inclusive.

3. This act shall take effect immediately.

Approved November 15, 1995.

CHAPTER 264

AN ACT concerning the county budget process 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:*

C.40A:4-22.1 "State-funded social service programs"; county trust fund; disbursement; annual budget message.

1. a. A county may establish a trust fund account entitled "State-funded social service programs" from which expenditures of county and State funds shall be disbursed for the following:

(1) Section 5 of P.L.1959, c.86 (C.44:10-5) for the various assistance to families with dependent children programs;

(2) R.S.30:4-78 with respect to payments for all county patients residing in State psychiatric facilities and facilities for the developmentally disabled;

(3) Section 30 of P.L.1951, c.138 (C.30:4C-30) for maintenance on behalf of children;

(4) R.S.44:7-25 for old age assistance;

(5) Section 3 of P.L.1951, c.139 (C.44:7-40) for assistance to the permanently and totally disabled; and

(6) Section 44 of P.L.1962, c.197 (C.44:7-46) for assistance for the blind.

Any required county share or match for these programs shall be first appropriated in the annual county budget, then paid to the trust fund prior to disbursement.

b. Commencing with the first year the State-funded social service program trust fund account is established, the board of chosen freeholders shall include in the annual budget message, required pursuant to N.J.S.40A:4-22, a summary of the anticipated State aid and county share for each program included in the trust fund.

2. This act shall take effect immediately.

Approved November 15, 1995.

CHAPTER 265

AN ACT concerning public school contracts and amending N.J.S.18A:18A-5.

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

1. N.J.S.18A:18A-5 is amended to read as follows:

Exceptions to requirement for advertising.

18A:18A-5. Exceptions to requirement for advertising. Any purchase, contract or agreement of the character described in N.J.S.18A:18A-4 may be made, negotiated or awarded by the board of education by resolution at a public meeting without public advertising for bids and bidding therefor if

a. The subject matter thereof consists of:

(1) Professional services;

(2) Extraordinary unspecifiable services which cannot reasonably be described by written specifications, which exception as to extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding where possible and the State Board of Education is authorized to establish rules and regulations limiting its use in accordance with the intention herein expressed; and the board of education shall in each instance state supporting reasons for its action in the resolution awarding the contract for extraordinary unspecifiable services;

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

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

(5) Textbooks, copyrighted materials, kindergarten supplies, and student produced publications and services incidental thereto;

(6) Food services and supplies, including food supplies for home economics classes, when purchased pursuant to rules and regulations of the State board and in accordance with the provisions of N.J.S.18A:18A-6;

(7) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with the tariffs and schedules of charges made, charged and exacted, filed with said board;

(8) The printing of bonds and documents necessary to the issuance and sale thereof by a board of education;

(9) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such services;

(10) Insurance, including the purchase of insurance coverage and consultant services;

(11) Publishing of legal notices in newspapers as required by law;

(12) The acquisition of artifacts or other items of unique intrinsic, artistic or historic character;

(13) Election expenses, including advertising expenses incidental thereto;

(14) Electronic data processing service obtained from another board of education;

(15) Driver education courses provided by licensed driver education schools;

(16) Performance of work or services or the furnishing of materials, supplies or equipment for the purpose of conserving energy in buildings owned by any local board of education, the entire price of which shall be established as a percentage of the resultant savings in energy costs;

(17) The doing of any work by persons with disabilities employed by a sheltered workshop.

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

c. The board of education has advertised for bids pursuant to N.J.S.18A:18A-4 on two occasions and has received no bids in response to its advertisement and, after reasonable inquiry, it is determined that no board, body, officer, agency or authority of the United States, or of the State of New Jersey or of any county or municipality in which the board of education is located is willing and able to perform any work or furnish or hire any materials or supplies in conformity with the specifications of the board of education. Any such contract or agreement entered into pursuant to this subsection c. may be made, negotiated or awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the board of education at a meeting thereof authorizing such a contract or agreement. Any amendment or modification of the terms, conditions, restrictions and specifications which were the subject of the competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated in the resolution awarding the contract.

d. The board of education has advertised for bids pursuant to N.J.S.18A:18A-4 on two occasions and has rejected such bids on each occasion because the board of education has determined that they are not reasonable as to price on the basis of cost estimates prepared for the board of education prior to the advertising therefor or have not been independently arrived at in open competition, but no such contract or agreement may be entered into after such rejection of bids, unless:

(1) Notification of the intention to negotiate and a reasonable opportunity to negotiate shall have been given by the board of education to each responsible bidder;

(2) The negotiated price is lower than the lowest rejected bid price of a responsible bidder who bid thereon and is the lowest negotiated price offered by any responsible supplier and is a reasonable price for such work, materials, supplies or services;

(3) Any amendment or modification of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated in the resolution awarding the contract; and

(4) The negotiated price is lower than the price of the same or equivalent materials or supplies available from the State, county or municipality in which the board of education is located.

Whenever a board of education shall determine that a bid was not arrived at independently in open competition pursuant to this subsection d. of N.J.S.18A:18A-5, it shall thereupon notify the county prosecutor of the county in which the board of education

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.

e. The board of education has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to N.J.S.18A:18A-10, and the lowest responsible quotation is at least 10% less than the price the board would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract or agreement entered into pursuant to subsection d. or subsection e. may be made, negotiated or awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the board of education at a meeting thereof authorizing such a contract or agreement.

2. This act shall take effect immediately.

Approved November 15, 1995.

CHAPTER 266

AN ACT concerning training for certain members of the fire service and supplementing chapter 27D of Title 52 and chapter 9 of Title 13 of the Revised Statutes.

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

1. The Legislature finds and declares that: (a) it is in the public interest and necessary for the protection of the health, safety and welfare of both fire fighters and the general public that fire service instructors be adequately trained to perform their duties in accordance with uniform standards and requirements; (b) the Division of Fire Safety in the Department of Community Affairs, as the office empowered by statute to implement training and education services for the fire service, should most appropriately be assigned the responsibility of establishing and implementing a

program of mandatory certification for all fire service instructors except for instructors of wildland and forestland fire fighters; (c) in order to provide for a system of personnel accountability on the fire ground, it is necessary and appropriate to adopt a mandatory incident management system for the fire service; and (d) it is essential to the safety of fire fighter trainees that a mechanism be established to provide assurance that all necessary precautions are taken for live fire training exercises.

The Legislature also finds and declares that forestland fire fighters in the State forest fire service are professional fire fighters under the jurisdiction of the Department of Environmental Protection, that training of fire fighter instructors in this department is also in the public interest and should be mandatory, and their training should be regulated and should continue under the appropriate authority of that department.

C.52:27D-25i Definitions relative to fire service training.

2. As used in this act:

"Commissioner" means the Commissioner of Community Affairs.

"Division" means the Division of Fire Safety in the Department of Community Affairs.

"Fire service" means the State, a county or municipal agency or fire district utilizing volunteer, career or part-paid fire fighters for rescue, fire suppression and related activities.

"Fire service instructor" means a career or volunteer or part-paid fire fighter who has been certified by the division to deliver fire fighter training after completing a prescribed curriculum.

"Fire service training organization" means any State, county or municipal agency or other entity, either public or private, which trains fire fighters.

"Incident management system" means a nationally recognized and organized system of rules, responsibilities and standard operating procedures used to manage emergency operations.

"Live fire training" means training that involves any open flame or device that can propagate fire.

C.52:27-25j Fire service instructor; training programs; certification.

3. a. A person providing training in a course for the fire service approved or offered by the division shall be certified by the division as a fire service instructor. The division shall be authorized to accept for certification the training credentials of instructors trained in other jurisdictions.

b. Training programs offered or approved by the division shall be provided by the division directly or by a fire service training organization utilizing instructors certified and facilities approved by the division. These training programs shall be available to all eligible fire fighters and to other persons, at the discretion of the division.

c. The division shall certify persons who successfully complete an instructor training program established in accordance with rules and regulations promulgated by the commissioner.

C.52:27-25k Rules, regulations on incident management.

4. The commissioner shall promulgate rules and regulations for the establishment of a mandatory incident management system to be used by the fire service.

C.52:27-25l Fire training activities; permit program, regulations.

5. a. Within six months after the effective date of this act, 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 establishing a permit program for the purpose of regulating live fire training activities. Regulations promulgated pursuant to this section shall be primarily based on standard 1403 established by the National Fire Protection Association and any other national standard, which may be adopted by reference. The regulations adopting standards by reference may include such modifications of these standards as the commissioner deems necessary. The regulations at a minimum shall assure that all necessary safety precautions are taken during live fire training exercises. They shall include a safety checklist for fire service instructors in charge which shall be completed before any live fire training exercise proceeds.

b. A fire service training organization shall not conduct a live fire training exercise until it has received a permit issued by the division. In its application for a permit, an organization shall provide such information as the commissioner shall specify, including, but not limited to, the course objective, the lesson plan, and the facility or site. The division shall either issue or deny the permit within 10 working days. If a permit is denied, the division shall inform the applicant of the reason for the denial and of any measures necessary to bring the application into compliance.

C.52:27-25m Compliance orders; violations.

6. The commissioner shall enforce and administer sections 3, 4, and 5 of P.L.1995, c.266 (C.52:27-25j, C.52:27-25k, and

C.52:27-25l) and shall be authorized to issue compliance orders to persons and public entities in violation thereof, to petition the Superior Court for injunctive relief enforcing any compliance order, to levy and collect civil penalties of not more than $500 per violation and to institute summary proceedings under "the penalty enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court to recover penalties previously levied. Each day that a violation continues after notice to cease has been given by certified mail or personal service shall be deemed a separate violation.

C.13:9-7.1 Mandatory training requirements for fire service instructors.

7. In accordance with the legislative findings and declarations in section 1 of P.L.1995, c.266, training for fire service instructors of forestland fire fighters shall be mandatory and shall be implemented under the authority and pursuant to regulations of the Department of Environmental Protection. This training requirement shall apply to instructors of fire fighters with the State forest fire service in the Division of Parks and Forestry of the Department of Environmental Protection whose job descriptions, duties and training standards are determined, regulated and implemented by the State forest fire service in accordance with standards of the United States Forest Service and of nationally recognized forest fire service associations or organizations.

8. This act shall take effect on the first day of the sixth month after enactment.

Approved November 15, 1995.

CHAPTER 267

AN ACT concerning the educational requirements for a certificate as a certified public accountant and amending P.L.1977, c.144.

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

1. Section 8 of P.L.1977, c.144 (C.45:2B-8) is amended to read as follows:

C.45:2B-8 Application; requirements.

8. Every applicant for a certificate shall present to the board a written application for such certificate on a form to be provided

by the board, together with the required fee, and satisfactory proof of the following:

a. That the applicant is at least 18 years of age;

b. That the applicant is of good moral character;

c. That the applicant is a resident of this State or maintains an office in this State for the regular practice of public accounting or is employed in this State by a certified public accountant or firm of certified public accountants having an office in this State for the practice of public accounting;

d. (1) That the applicant has a baccalaureate degree or its equivalent as determined by the New Jersey Commission on Higher Education including such courses in accounting and related professional courses as the board may require, provided, that the board shall admit to the examination an individual who demonstrates to the board's satisfaction that he has acquired through experience and substantial formal higher education the equivalent of such baccalaureate degree;

(2) That the applicant after July 1, 2000, and according to the rules established by the board, has at least 150 credit hours of education, including a baccalaureate or higher degree, from an institution of higher education acceptable to the board. The board shall promulgate rules or regulations to require the applicant's total educational program include an accounting concentration or its equivalent; and

e. That the applicant has had in the aggregate the following experience:

(1) At least two years in public accounting work in the office of a certified public accountant or a public accountant, or a firm of certified public accountants or a firm of public accountants; or

(2) (Deleted by amendment, P.L.1991, c.361).

(3) At least four years accounting work in the employ of some state or any political subdivision thereof or of the United States; or

(4) At least four years in comparable accounting activity.

The board may accept teaching experience or graduate or other study in courses related to accounting in lieu of the required experience.

Evidence of such experience or study shall be submitted to the board in detail for its review and evaluation. Such evidence must demonstrate preparation for practice requiring the intensive, diversified application of accounting and auditing principles and procedures.

The board may accept service in the Armed Forces of the United States for experience credit on the basis of one month's credit for each six months' service, with a maximum credit of eight months.

2. This act shall take effect immediately.

Approved November 15, 1995.

CHAPTER 268

AN ACT concerning higher education and amending P.L.1994, c.48.

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

1. Section 7 of P.L.1994, c.48 (C.18A:3B-7) is amended to read as follows:

C.18A:3B-7 "New Jersey Presidents' Council" established.

7. There is established a body corporate and politic, with corporate succession, to be known as the "New Jersey Presidents' Council." Each president of a public institution of higher education in the State and of an independent institution which receives direct State aid shall be a member of the council and shall serve ex officio. The presidents of the two proprietary schools which enroll the largest numbers of pupils in State licensed degree programs shall also serve as members of the council, ex officio, to represent the interests of all such schools. The presidents of the two institutions primarily involved in the preparation of professional persons in the field of religion which enroll the largest number of pupils in State licensed degree programs shall also serve as members of the council, ex officio, to represent the interests of all such schools.

2. Section 8 of P.L.1994, c.48 (C.18A:3B-8) is amended to read as follows:

C.18A:3B-8 Responsibilities of council.

8. The council shall have the responsibility, consistent with State and federal law, to:

a. provide public information and research on higher education issues;

b. review and make recommendations to the commission concerning proposals for new programs that exceed the programmatic mission of an institution or that change the programmatic mission of an institution;

c. review and comment on proposals for new programs that demand significant added resources or raise significant issues of duplication but do not exceed the programmatic mission of the institution or require a change in the programmatic mission. If the council determines that a proposed new program is unduly expen-

sive or unduly duplicative, the council shall refer that proposal to the commission for review; however, unless the commission disapproves of that program within 60 days of its referral, the program shall be deemed approved;

d. encourage the formation of regional or other alliances among institutions including interinstitutional transfers, program articulation, cooperative programs and shared resources and develop criteria for "full faith and credit" transfer agreements between county colleges and other institutions of higher education. The council shall also keep institutions apprised of the discontinuance of programs at other institutions and each president shall notify the council of any such action;

e. advise and assist the commission in developing and updating a plan for higher education in the State including, but not limited to, the establishment of new institutions, closure of existing institutions and consolidation of institutions;

f. provide policy recommendations on Statewide higher education issues;

g. recommend to the Governor, Legislature and commission on policy and overall levels of funding for student aid programs necessary to ensure accessibility to higher education;

h. transmit to the Governor, Legislature and commission a general budget policy statement regarding overall State funding levels;

i. upon referral from the commission pursuant to this act provide recommendations concerning institutional licensure and university status; and

j. appoint subcommittees consisting of the presidents of the institutions of the various higher education sectors to decide matters, within the authority of the council. The presidents of the independent institutions shall develop a unified request for State support under chapter 72B of Title 18A of the New Jersey Statutes. The presidents of the county college sector shall develop a unified request for State support under chapter 64A of Title 18A of the New Jersey Statutes.

3. This act shall take effect immediately.

Approved December 8, 1995.

CHAPTER 269

AN ACT concerning the eviction of certain tenants and amending P.L.1974, c.49.

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

1. Section 2 of P.L.1974, c.49 (C.2A:18-61.1) is amended to read as follows:

C.2A:18-61.1 Grounds for removal of tenants.

2. No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability, except upon establishment of one of the following grounds as good cause:

a. The person fails to pay rent due and owing under the lease whether the same be oral or written.

b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood.

c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises.

d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term.

e. The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is

reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term.

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors or zoning officers and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1 et seq.) have been complied with.

h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile home park, provided this subsection shall not apply to circumstances covered under subsection g. of this section.

i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-61.2), or has a protected tenancy status pursuant to sec-

tion 9 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion.

j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing.

k. The landlord or owner of the building or mobile home park is converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection l. of this section. Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been complied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.22 et al.), or against a qualified tenant under the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired.

l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this subsection unless the tenant was given a statement in accordance with section 6 of P.L.1975, c.311 (C.2A:18-61.9);

(2) The owner of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from an owner of three or less units after the master deed or agreement establishing the cooperative was recorded, because the owner seeks to personally occupy the unit, or has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;

(3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.

m. The landlord or owner conditioned the tenancy upon and in consideration for the tenant's employment by the landlord or owner as superintendent, janitor or in some other capacity and such employment is being terminated.

n. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person harboring or permitting a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said act. No action for removal may be brought pursuant to this subsection more than two years after the date of the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

o. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits

or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently. No action for removal may be brought pursuant to this subsection more than two years after the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

p. The person has been found, by a preponderance of the evidence, liable in a civil action for removal commenced under this act for an offense under N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord, or under the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who committed such an offense, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person who harbors or permits a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said "Comprehensive Drug Reform Act of 1987."

For purposes of this section, (1) "developmental disability" means any disability which is defined as such pursuant to section 3 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate family" means a person's spouse, parent, child or sibling, or a spouse, parent, child or sibling of any of them; and (3) "permanently" occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant's behalf.

2. This act shall take effect immediately.

Approved December 8, 1995.

CHAPTER 270

AN ACT concerning liability for discharges of hazardous substances, and supplementing P.L.1976, c.141 (C.58:10-23.11 et seq.).

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

C.58:10-23.11g10 Discharges on certain public property; definitions.

1. a. As used in this section:

"Governmental unit" means the State, a municipality, county, or other political subdivision of the State, or any agency thereof authorized to administer, protect and maintain lands or structures for recreation or conservation purposes;

"Recreation or conservation purposes" means the use of lands for parks, natural areas, ecological and biological study, historic areas, historic buildings or structures, forests, trails, camping, fishing, water reserves, wildlife preserves, hunting, boating, winter sports and similar uses for either public outdoor recreation or conservation of natural resources, or both.

b. A governmental unit that holds an easement interest in any real property for recreation or conservation purposes on which there has been a discharge of a hazardous substance, shall not be liable pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), any other law, or common law, for cleanup and removal costs, or for any direct or indirect damages, due to the discharge of a hazardous substance on the property. The provisions of this section shall not apply to a governmental unit if that entity has caused or contributed to the discharge of a hazardous substance on the property.

2. This act shall take effect immediately and shall apply retroactively to any administrative or judicial action commenced before the effective date of this act, unless a final court judgment or final court approval of a settlement agreement has been rendered in an administrative or judicial action prior to the effective date of this act. If a final court judgment has been rendered or a settlement has been approved by a court prior to the effective date of this act that does not resolve all contested issues, this act shall apply to all contested issues not expressly resolved by the court judgment or settlement agreement.

Approved December 8, 1995.

CHAPTER 271

AN ACT concerning pupil transportation and amending N.J.S.18A:39-1.2 and N.J.S.40A:4-39.

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

1. N.J.S.18A:39-1.2 is amended to read as follows:

Provision of transportation for certain pupils, contracts, charges, method of collection.

18A:39-1.2. Whenever the governing body of a municipality finds that for safety reasons it is desirable to provide transportation to and from a school for pupils living within the municipality, other than those living remote from the school or those physically handicapped or mentally retarded, the governing body and the board of education of the district are authorized to enter into a contract pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) under the terms of which the board shall provide such transportation. Any funds required to be paid by the municipality to the board of education under such a contract shall be appropriated by the governing body and paid to the custodian of school moneys of the district. The governing body of the municipality may charge the parents or guardians of children who are transported for safety reasons in order to help defray expenses, provided that no charge shall be imposed on the parent or guardian of any child who meets the Statewide eligibility standards established by the State Board of Education for free and reduced price meals under the State school lunch program. The amount of any charges and the method of collection shall be specified in the contract between the municipal governing body and the board of education. Nothing in this section shall prevent a board of education from providing transportation at its own expense.

2. N.J.S.40A:4-39 is amended to read as follows:

Anticipation of dedicated revenues.

40A:4-39. a. In the budget of any local unit, dedicated revenues anticipated during the fiscal year from any dog tax, dog license, revenues collected pursuant to N.J.S.18A:39-1.2, solid fuel license, sinking fund for term bonds, bequest, escheat, federal grant, motor vehicle fine dedicated to road repairs, relocation costs deposited into a revolving relocation assistance fund estab-

lished pursuant to section 2 of P.L.1987, c.98 (C.20:4-4.1a), receipts from franchise assessments levied pursuant to section 4 of P.L.1995, c.173 (C.40A:12A-53) and, subject to the prior written consent of the director, other items of like character when the revenue is not subject to reasonably accurate estimate in advance, may be included in said budget by annexing to said budget a statement in substantially the following form:

"The dedicated revenues anticipated during the year..... from..... (here insert one or more of the sources above, as the case may be) are hereby anticipated as revenue and are hereby appropriated for the purposes to which said revenue is dedicated by statute or other legal requirement."

b. Dedicated revenues included in accordance with this section shall be available for expenditure by the local unit as and when received in cash during the fiscal year. The inclusion of such dedicated revenues shall be subject to the approval of the director, who may require such explanatory statements or data in connection therewith as the director deems advisable for the information and protection of the public.

3. This act shall take effect immediately.

Approved December 8, 1995.

CHAPTER 272

AN ACT concerning the Pinelands Municipal Council and amending and supplementing P.L.1979, c.111 (C.13:18A-1 et seq.).

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

1. Section 6.1 of P.L.1979, c.111 (C.13:18A-7) is amended to read as follows:

C.13:18A-7 Pinelands Municipal Council established.

6.1. a. There is hereby established a Pinelands Municipal Council, the membership of which shall consist of the mayor, or his designee, of each municipality located, in whole or in part, within the pinelands area.

b. (1) Fifteen members of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of those members of the council in attendance.

(2) The council shall draft and adopt bylaws to govern the proceedings of the council.

c. (1) The council shall meet at the call of the chairperson of the council or upon the concurrence of a majority of the full membership of the council.

(2) Notice of the agenda for each meeting shall be mailed by the chairperson to all members of the council at least seven calendar days in advance of the date of the meeting.

d. The council shall appoint a chairperson from among its members and such other officers as may be necessary until such time as elections may be held therefor as provided pursuant to section 2 of P.L.1995, c.272 (C.13:18A-7.1).

e. (1) Members of the council shall serve without compensation, and each member shall serve only as long as he is the mayor or the designee of the mayor of the municipality he represents. The council may, within the limits of funds appropriated or otherwise made available for such purposes, reimburse its members for necessary expenses incurred in the discharge of their official duties.

(2) The council may, within the limits of funds appropriated or otherwise made available for such purposes, appoint such staff or hire such experts as it may require.

f. The commission shall submit to the council, for review, prior to final commission action thereon, the comprehensive management plan, and any revisions thereto, including the minimum standards for the adoption of municipal and county plans and ordinances concerning the development and use of land in the pinelands area. The commission may also submit to the council any other matter that the commission deems advisable.

g. The council shall review all matters submitted to it by the commission and shall state its position to the commission and to all members of the council within 60 days of the submission thereof.

h. The council may make recommendations to the commission on any matters it deems advisable whether or not the matter was submitted to the council by the commission. The council shall mail to all members of the council any recommendations made to the commission at the time that the recommendations are submitted to the commission. Members of the council may provide comments to the commission regarding the recommendations.

C.13:18A-7.1 Election of officers by council.

2. a. The council shall annually elect from among its members a chairperson, vice-chairperson, secretary, and treasurer. The term of office for each of those offices shall be one year, commencing April 1st and extending to March 31st of the following year. If for any reason an officer of the council is no longer a member of the council as defined pursuant to subsection a. of section 6.1 of P.L.1979, c.111 (C.13:18A-7), the officer shall be deemed to have resigned from the office as of the date of loss of membership and the office shall be deemed vacant. In the event of a vacancy in the office of the chairperson, the vice-chairperson shall assume the duties of the office of chairperson until the next annual election as provided in subsection b. of this section. An incumbent officer shall be eligible for reelection to the same or a different office, if nominated.

b. Elections for the offices of chairperson, vice-chairperson, secretary, and treasurer of the council shall be conducted each year in the following manner:

(1) Between January 15th and January 25th, the chairperson of the council shall notify by mail all members of the council that they may submit nominations for the various offices on the council. Nominations shall be accepted if received at the address specified on the notice by February 10th.

(2) Ballots shall be prepared listing the nominations submitted for the various offices and shall be mailed to all members of the council by February 15th. Members of the council shall submit their marked ballots by mail to the address specified on the ballot. Only ballots postmarked by March 1st shall be accepted. The ballots shall be counted, and the results of the election announced, at a meeting of the council held not later than March 10th. For each office, the nominee on the ballot receiving the most votes after all properly submitted marked ballots have been counted shall be declared the winner.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection to the contrary, the election of officers first held pursuant to the requirements of this section shall be conducted on behalf of the council, and the ballots counted and results of the election announced, by the Secretary of State; thereafter, each such annual election shall be conducted by the council through its officers as prescribed in this section.

3. This act shall take effect immediately except section 2 thereof shall take effect January 1st next following the date of enactment.

Approved December 8, 1995.

CHAPTER 273

AN ACT concerning the powers of Department of Human Services police officers, supplementing chapter 4 of Title 30 of the Revised Statutes, and amending R.S.30:4-14 and N.J.S.2C:39-6.

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

1. R.S.30:4-14 is amended to read as follows:

Police officers for Department of Human Services; powers; appointment.

30:4-14. a. The Commissioner of Human Services may, in writing, appoint persons to the position of police officer to serve as law enforcement officers for the Department of Human Services in accordance with applicable statutory law, rules and regulations.

b. A Human Services police officer appointed pursuant to this section shall be empowered to act as an officer for the detection, apprehension, arrest and conviction of offenders against the law, except that police officers shall be permitted to carry firearms or other weapons only when authorized to do so by the Commissioner of Human Services.

c. No person may be appointed as a Human Services police officer unless the person:

(1) Is able to read, write and speak the English language well and intelligently and has a high school diploma or its equivalent;

(2) Is sound in body and of good health;

(3) Is of good moral character;

(4) Has not been convicted of any offense involving dishonesty or which would make the person unfit to perform the duties of this office; and

(5) Has successfully undergone a program of psychological testing.

d. Every applicant for the position of Human Services police officer appointed pursuant to this section shall have fingerprints taken, which fingerprints shall be filed with the Division of State Police and the Federal Bureau of Investigation.

e. The Commissioner of Human Services, in consultation with the Attorney General and the Director of the Division of Criminal Justice in the Department of Law and Public Safety, shall promulgate rules and regulations to effectuate the purposes of this section.

2. N.J.S.2C:39-6 is amended to read as follows:

Exemptions.

2C:39-6. a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park ranger, or State conservation officer;

(5) A prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a correction officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;

(7) (a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c.439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection b. of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons; or

(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c.409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, such a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which he may be

required to carry, while in the actual performance of his official duties and while going to or from his place of duty, or any other police officer, while in the actual performance of his official duties;

(2) A State deputy conservation officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of his official duties;

(3) (Deleted by amendment, P.L.1986, c.150.)

(4) A court attendant serving as such under appointment by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of his official duties;

(5) A guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of his official duties;

(6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;

(7) An officer of the Society for the Prevention of Cruelty to Animals, while in the actual performance of his duties;

(8) An employee of a public utilities corporation actually engaged in the transportation of explosives;

(9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that he has passed an approved police academy training program consisting of at least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;

(10) A campus police officer appointed under P.L.1970, c.211 (C.18A:6-4.2 et seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(11) A person who has not been convicted of a crime under the laws of this State or under the laws of another state or the United States, and who is employed as a full-time security guard for a nuclear power plant under the license of the Nuclear Regulatory Commission, while in the actual performance of his official duties;

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, pro-

vided 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 Bureau of Parole in the Department of Corrections at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services.

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 exhi-

bitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than $100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in 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.

C.30:4-14.1 Authorization required to carry firearm.

3. No Human Services police officer shall carry a firearm unless specifically authorized by the Commissioner of Human Ser-

vices and provided that the officer has satisfactorily completed a basic firearms course required by the Police Training Commission.

C.30:4-14.2 Training requirements for Human Services police officers.

4. Human Services police officers appointed pursuant to R.S.30:4-14 shall satisfy the training requirements established by the Police Training Commission as follows:

a. All officers appointed pursuant to this section after the effective date of this act shall successfully complete, within one year of the date of their appointment, a training course approved by the Police Training Commission;

b. All officers appointed and in employment on the effective date of this act may continue in employment if, within 18 months of the effective date of this act, they have satisfied the training requirements of the Police Training Commission; and

c. The Commissioner of Human Services may request from the Police Training Commission an exemption from all or part of the training requirements of this section on behalf of a current or prospective officer who demonstrates successful completion of a police training course conducted by any federal, state or other public or private agency, the requirements of which are substantially equivalent to the requirements of the Police Training Commission.

5. This act shall take effect immediately.

Approved December 8, 1995.

CHAPTER 274

AN ACT concerning Palisades Interstate Park and the Palisades Interstate Park Commission, amending various sections of chapter 14 of Title 32 of the Revised Statutes, amending P.L.1980, c.104, and repealing R.S.32:14-8 through R.S.32:14-12.

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

1. Section 1 of P.L.1980, c.104 (C.32:14-1.1) is amended to read as follows:

C.32:14-1.1 Findings, declarations relative to Palisades Interstate Park Commission.

1. The Legislature finds and declares that the Palisades Interstate Park constitutes a natural and historic resource of

immeasurable value; that concern for the preservation of this resource resulted in the enactment, in 1937, of an interstate compact between New Jersey and New York; that this compact established the Palisades Interstate Park Commission as a separate agency charged with the responsibility of maintaining this interstate park; that the separation of this commission from all other agencies of State government has tended to impede, rather than facilitate, the discharging of this responsibility; that from time to time it may benefit the State of New Jersey to utilize the Palisades Interstate Park Commission as the administering agency for parkland that may be acquired in the Highlands or Skylands areas of Bergen, Hunterdon, Morris, Passaic, Somerset and Warren counties in the State of New Jersey, including lands in those areas lying within the North Jersey Water Supply District; and that, in order to insure the realization of the purpose of the interstate compact, it is necessary to alter the powers, functions and duties of the Palisades Interstate Park Commission, all as hereinafter provided.

2. R.S.32:14-5 is amended to read as follows:

Lands included in and purpose of park; authority to acquire.

32:14-5. a. Palisades Interstate Park Commission shall, from time to time, select and locate such lands lying between the top or steep edge of the Palisades or the crest of the slope in places where the steep Palisade rocks are absent and the high-water line of the Hudson river, from the New York State line on the north, to a line beginning at the intersection of the southern line of the old Fort Lee dock or landing with the high-water line of the Hudson river and running thence in a westerly direction and at right angles to said high-water line of the Hudson river to the east side of the river road running from Edgewater to Fort Lee, in Bergen county, on the south, and such lands or rights in lands belonging to persons other than the State, as may lie between the exterior bulkhead line established in the Hudson river and the high-water line of the Hudson river, as may, in the opinion of the Palisades Interstate Park Commission, be proper and necessary to be reserved for the purpose of establishing a park and thereby preserving the scenic beauty of the Palisades.

b. The Palisades Interstate Park Commission, in cooperation with the North Jersey District Water Supply Commission and in consultation with the New Jersey Department of Environmental Protection, may, from time to time, select and locate such lands

lying within the Highlands or Skylands areas of Bergen, Hunterdon, Morris, Passaic, Somerset and Warren counties in the State of New Jersey, including lands in those areas lying within the North Jersey Water Supply District, as may, in the opinion of the Palisades Interstate Park Commission and the North Jersey District Water Supply Commission, in consultation with the department, be proper and necessary to be reserved for establishing a park:

(1) to preserve the scenic beauty of those areas;

(2) for the purposes of recreation and conservation, which shall include hunting and fishing, or historic preservation; or

(3) for the purposes of watershed conservation or protecting, maintaining, or enhancing the quality and quantity of water supplies.

c. Except as authorized for the purposes specified by R.S.32:15-1 et seq. and R.S.32:16-1 et seq. with regard to the location, construction, maintenance, and operation of the Henry Hudson Drive and the Palisades Interstate Parkway in Bergen county, the Palisades Interstate Park Commission shall not acquire by condemnation any lands described in subsections a. and b. of this section. Any such lands shall be acquired by the Palisades Interstate Park Commission only through a sale by a willing seller.

3. R.S.32:14-7 is amended to read as follows:

Gifts, contributions or bequests; power to purchase, sell or lease.

32:14-7. Palisades Interstate Park Commission shall have power to receive by gift, contribution or bequest, moneys, stocks, bonds, securities or other property, and own, hold, invest or otherwise use the same. The Palisades Interstate Park Commission shall have power to purchase or otherwise acquire personal property and to hold the same. The Palisades Interstate Park Commission shall have power to sell all personal property, supplies, chattels, material, profits a prendre and the right to surplus waters which the Palisades Interstate Park Commission decides to be not necessary or desirable for the uses and purposes of the park, and to lease, charter, license or privilege the use, for park or other purposes, of all personal property. In relation to lands acquired by the Palisades Interstate Park Commission within the region served by the North Jersey District Water Supply Commission, the North Jersey District Water Supply Commission may determine which waters are surplus, and no surplus waters or rights thereto shall be sold, leased, or used without review and comment by the North Jersey District Water Supply Commission.

Nothing in this section shall be construed to limit the authority of the Department of Environmental Protection to manage water supplies pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.).

The Palisades Interstate Park Commission may seek, receive, and retain financial or other aid or assistance from the federal government or any state, local, or other governmental entity or authority, which aid or assistance may be used in the State of New Jersey, at the discretion of the Palisades Interstate Park Commission in cooperation with the North Jersey District Water Supply Commission, for any park purpose except as may be specifically designated or restricted by law or by the terms of any such aid or assistance.

4. R.S.32:14-6 is amended to read as follows:

Methods of acquiring lands; conveyances.

32:14-6. Palisades Interstate Park Commission shall have power to acquire, maintain and make available for use as part of Palisades Interstate Park the lands located as described in R.S.32:14-5, and, for such purposes, shall have power to acquire in fee or otherwise, by purchase, gift, or devise, but not by eminent domain, such lands or parts thereof, and any rights, interests and easements therein. The commission shall also have power to acquire by purchase, gift, or devise, but not by eminent domain, for the purposes herein set forth, any lands on the top of the Palisades or any rights, interests or easements therein. Deeds of conveyance for the lands shall be made to the commission by its corporate name.

5. R.S.32:14-15 is amended to read as follows:

Continuity of park with New York park.

32:14-15. Palisades Interstate Park Commission shall, in laying out and maintaining the portions of the park in this State, have regard for the laying out and maintenance of such portions of the park as may be in the State of New York along the Palisades and Hudson river, and shall, so far as may be, lay out and maintain the appropriate portions of the park in this State in such manner that they, together with such appropriate portions of the park as may be in the State of New York, shall form a continuous park, one of the intentions of this chapter being to provide, in conjunction with the State of New York, for the establishment of a park along the entire front of the Palisades, from Fort Lee in this State to the termination thereof in New York, thereby preserving the scenic beauty of the Palisades.

6. R.S.32:14-24 is amended to read as follows:

Locations of holding police court.

32:14-24. The police court may be held in any portion of the Palisades Interstate Park lying within this State, or in any municipality of the county in which any part of the park may lie.

Repealer.

7. R.S.32:14-8 through R.S.32:14-12 are repealed.

8. This act shall take effect immediately.

Approved December 14, 1995.

CHAPTER 275

AN ACT concerning export trade, establishing a voluntary certification program for qualified export trading corporations.

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

C.52:27H-22.7 Findings, declarations relative to export trade.

1. The Legislature hereby finds and declares that:

a. The United States has significantly fallen behind other industrialized nations with respect to the volume of its exports in relation to its gross national product, and this trend will continue as the European economic community grows in strength as an economic competitor;

b. The advent of the North American Free Trade Agreement (NAFTA) and the opening of markets in Eastern Europe and the nations of the former Soviet Union present important opportunities to expand our markets abroad;

c. Export trade has a material impact in bringing about economic expansion and sustainable economic growth, having a particularly salutary effect upon manufacturing industries which have saturated their domestic markets;

d. Many small domestic industries have the potential for great expansion through the development of export trade, but lack the incentive, information, expertise, and financing to develop an effective export trade program;

e. In order to assist businesses with little or no export experience in establishing a relationship with an export agent which has the appropriate expertise and offers a full range of export services, the Legislature finds it appropriate to establish a voluntary State certification program for qualified export trading corporations organized solely to assist new entrants into the export market, in an effort to ensure a standard of proficiency and reliability in the export services provided.

C.52:27H-22.8 Definitions relative to export trade.

2. As used in this act:

"Board" means the board of directors of the corporation.

"Clients" mean eligible businesses which utilize the services of the corporation.

"Commissioner" means the Commissioner of Commerce and Economic Development.

"Corporation" means an export trading corporation certified pursuant to section 3 of this act.

"Department" means the Department of Commerce and Economic Development.

"Eligible business" means a business located in New Jersey which is a new entrant into an export market with little or no export experience and which can reasonably be determined to be able to sustain and expand its export capability after using the services of a corporation.

"Export trade" means trade or commerce in goods or services which are exported or in the course of being exported through any port in the United States directly to a foreign country.

C.52:27H-22.9 Voluntary certification program established.

3. The commissioner shall establish a voluntary certification program for export trading corporations which meet the standards established by this act. Each corporation seeking State certification shall make application therefor in the manner prescribed by the commissioner. Upon the granting of the certification, the corporation may use the title "New Jersey Certified Export Trading Corporation." The department shall cooperate and assist all export trading corporations certified pursuant to this act.

C.52:27H-22.10 Qualifications of corporations, reviewed by commissioner.

4. The commissioner shall review the qualifications of corporations certified pursuant to this act not less than once every five years. If the commissioner determines that the certified corpora-

tion no longer meets the qualification standards established pursuant to this act, or the corporation's business practices do not meet professional standards or are not in conformance with the provisions of this act, the commissioner shall notify the corporation in writing of the deficiencies. If the deficiencies are not corrected within a reasonable period of time to the satisfaction of the commissioner, the commissioner may revoke the corporation's certification. A corporation which has had its certification revoked may reapply for certification on terms and conditions established by the commissioner. No certification shall be granted to any export trading entity which does not meet the standards established by this act.

C.52:27H-22.11 Fees.

5. The following fees shall be assessed, in an amount to be determined by the commissioner, in connection with the voluntary certification provided for under this act: a. An initial application fee not to exceed $250; b. An annual renewal fee; and c. A reinstatement fee. Failure on the part of a corporation to pay the assessed certification fees shall result in the denial or revocation of its certification.

C.52:27H-22.12 Certification qualifications.

6. To qualify for certification under this act, the export trading corporation shall: a. Provide in its bylaws that its sole purpose and function is to serve as an incubator facility for eligible businesses; b. Demonstrate that (1) a majority of its board members have experience in the business of export trade for a period of at least five years; (2) the corporation is financially sound; and (3) the corporation has adequate resources to determine the viability of its clients' products or services in international markets; c. Provide a program designed to bring new entrants into the export market and develop their exporting self-sufficiency; d. Establish in connection with community colleges and other institutions of higher education, an internship or job training program or programs for students enrolled in a curriculum in a public or private institution of higher education for which knowledge of export trade will enhance the student's ability to find employment and for employees of a business which exports or intends to export, and may be eligible for funding under the terms of the Workforce Development Partnership Program established pursuant to P.L.1992, c.43 (C.34:15D-1 et seq.); and e. Provide at least the following services to new entrants into the export market:

(1) Provide or contract for assistance in researching foreign markets;

(2) Provide or contract for assistance in advertising, marketing, and participation in foreign trade fairs;

(3) Provide or contract for assistance in placing bids with foreign buyers;

(4) Provide or contract for legal assistance in arranging export trade transactions;

(5) Provide or contract for assistance in the pricing of goods to be exported, arranging the terms of sale, and facilitating foreign exchange transactions;

(6) Assist in arranging for loans or loan guarantees to clients, including loans or guarantees from the authority, commercial banking institutions, foreign banking institutions, or the Export-Import Bank of the United States;

(7) Provide or contract for translating, interpreting, or other services to facilitate communication between exporters and foreign purchasers;

(8) Assist in arranging for the training of employees or prospective employees of clients with respect to the conducting of export trade;

(9) Obtain, or assist in obtaining, bankers' acceptances pursuant to section 207 of Title II of the Export Trading Company Act of 1982, Pub.L.97-290 (12 U.S.C.§372);

(10) Purchase or take title to the receivables of exporters, or arrange purchases through independent factoring houses;

(11) Assist in arranging for the packing, transportation, and shipment of goods;

(12) Assist in, or contract for assistance in, the preparation of appropriate shipping and collection documents;

(13) Assist in, or contract for assistance in, the purchase of appropriate insurance, including marine and export credit insurance, provided through private carriers, or at the discretion of the board, through an umbrella or blanket policy obtained by a corporation;

(14) Assist in, or contract for assistance in, the processing of foreign orders to and for exporters and foreign purchasers;

(15) Assist in arranging joint ventures with other exporters or with a foreign entity;

(16) Assist in, or contract for assistance in, negotiating license agreements with foreign firms;

(17) Assist in arranging financing through the New Jersey Economic Development Authority, the Export-Import Bank of the United States, through private sources, or a combination thereof; and

(18) Assist clients in applying for export trade-related job training assistance pursuant to the Workforce Development Partnership Program established pursuant to P.L.1992, c.43 (C.34:15D-1 et seq.).

C.52:27H-22.13 List of certified export trading corporations.

7. The commissioner shall maintain a list of certified export trading corporations which the commissioner shall make available to the business community and to community colleges and other institutions of higher education which conduct educational programs for businesses seeking information on exporting.

C.52:27H-22.14 Providing information to New Jersey businesses.

8. The department shall, through its business assistance programs, provide information to New Jersey businesses about the opportunities which may exist for exporting their goods and services.

9. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 276

AN ACT concerning farmland assessment, and amending and supplementing P.L.1964, c.48 and amending P.L.1970, c.237.

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

1. Section 3 of P.L.1964, c.48 (C.54:4-23.3) is amended to read as follows:

C.54:4-23.3 Agricultural use of land.

3. Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding, boarding, raising, rehabilitating, training or grazing of any or all of such animals, except that "livestock" shall not include dogs; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government, except that land which is devoted exclusively to the

production for sale of tree and forest products, other than Christmas trees, and is not appurtenant woodland, shall not be deemed to be in agricultural use unless the landowner fulfills the following additional conditions:

a. The landowner establishes and complies with the provisions of a woodland management plan for this land, prepared in accordance with policies, guidelines and practices approved by the Division of Parks and Forestry in the Department of Environmental Protection, in consultation with the Department of Agriculture and the Dean of Cook College at Rutgers, The State University, which policies, guidelines and practices are designed to eliminate excessive and unnecessary cutting;

b. The landowner and a forester from a list of foresters approved by the Department of Environmental Protection annually attest to compliance with subsection a. of this section; and

c. The landowner annually submits an application, as prescribed in section 13 of P.L.1964, c.48 (C.54:4-23.13), to the assessor, accompanied by a copy of the plan established pursuant to subsection a. of this section; written documentation of compliance with subsection b. of this section; a supplementary woodland data form setting forth woodland management actions taken in the pre-tax year, the type and quantity of tree and forest products sold, and the amount of income received or anticipated for same; a map of the land showing the location of the activity and the soil group classes of the land; and other pertinent information required by the Director of the Division of Taxation as part of the application for valuation, assessment and taxation, as provided in P.L.1964, c.48 (C.54:4-23.1 et seq.). The landowner shall, at the same time, submit to the Commissioner of the Department of Environmental Protection an exact copy of the application and accompanying information submitted to the assessor pursuant to this subsection. For the purposes of this amendatory and supplementary act, "appurtenant woodland" means a wooded piece of property which is contiguous to, part of, or beneficial to a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses other than the production for sale of trees and forest products, exclusive of Christmas trees, to which tract of land the woodland is supportive and subordinate.

2. Section 5 of P.L.1964, c.48 (C.54:4-23.5) is amended to read as follows:

C.54:4-23.5 Land deemed actively devoted to agricultural or horticultural use.

5. Land, five acres in area, shall be deemed to be actively devoted to agricultural or horticultural use when the amount of the gross sales of agricultural or horticultural products produced thereon, any payments received under a soil conservation program, fees received for breeding, raising or grazing any livestock, income imputed to land used for grazing in the amount determined by the State Farmland Evaluation Advisory Committee created pursuant to section 20 of P.L.1964, c.48 (C.54:4-23.20), and fees received for boarding, rehabilitating or training any livestock where the land under the boarding, rehabilitating or training facilities is contiguous to land which otherwise qualifies for valuation, assessment and taxation under this act, have averaged at least $500.00 per year during the two-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least $500.00 within a reasonable period of time.

In addition, where the land is more than five acres in area, it shall be deemed to be actively devoted to agricultural or horticultural use when the amount of the gross sales of agricultural or horticultural products produced on the area above five acres, any payments received under a soil conservation program, fees received for breeding, raising or grazing any livestock, income imputed to land used for grazing in the amount determined by the State Farmland Evaluation Advisory Committee created pursuant to section 20 of P.L.1964, c.48 (C.54:4-23.20), and fees received for boarding, rehabilitating or training any livestock where the land under the boarding, rehabilitating or training facilities is contiguous to land which otherwise qualifies for valuation, assessment and taxation under this act, have averaged at least $5.00 per acre per year during the two-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to an average of at least $5.00 per year within a reasonable period of time; except in the case of woodland and wetland, where the minimum requirement shall be an average of $0.50 per acre on the area above five acres.

As used in this section, "livestock" shall not include dogs.

For the purposes of this section, the presence of an intervening public thoroughfare shall not preclude a finding of contiguity.

Land previously qualified as actively devoted to agricultural or horticultural use under the act; but failing to meet the additional requirement on acreage above five acres shall not be subject to the

roll-back tax because of such disqualification, but shall be treated as land for which an annual application has not been submitted.

In determining the eligibility of land for valuation, assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.), the assessor of the taxing district in which the land is located shall, upon request by the owner of the land, exempt the owner from the income requirements of this section if the owner demonstrates to the satisfaction of the assessor that the failure to meet the income requirements was due to an injury, illness or death of the person responsible for performing the activities which produce the income necessary to meet the income eligibility requirement of this section. The request of the owner shall be accompanied by a certificate of a physician stating that the person was physically incapacitated or by a certified copy of the death certificate, as the case may be. The assessor may only grant an exemption once for a particular illness, injury or death.

3. Section 11 of P.L.1964, c.48 (C.54:4-23.11) is amended to read as follows:

C.54:4-23.11 Area of land included.

11. In determining the total area of land actively devoted to agricultural or horticultural use there shall be included the area of all land under barns, sheds, seasonal farm markets selling predominantly agricultural products, seasonal agricultural labor housing, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities, but land under and such additional land as may be actually used in connection with the farmhouse shall be excluded in determining such total area.

4. Section 12 of P.L.1964, c.48 (C.54:4-23.12) is amended to read as follows:

C.54:4-23.12 Structures valued, assessed and taxed; "single-use agricultural or horticultural facility defined; rules, regulations.

12. a. All structures, which are located on land in agricultural or horticultural use and the farmhouse and the land on which the farmhouse is located, together with the additional land used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other land in the taxing district, regardless of the fact that the land is being valued, assessed and taxed pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.); provided, however, that the

term "structures" shall not include "single-use agricultural or horticultural facilities." As used in this act, "single-use agricultural or horticultural facility" means property employed in farming operations and commonly used for either storage or growing, which is designed or constructed so as to be readily dismantled and is of a type which can be marketed or sold separately from the farmland and buildings and shall include, but not be limited to, temporary demountable plastic covered framework made up of portable parts with no permanent understructures or related apparatus, commonly known as seed starting plastic greenhouses, or other readily dismantled silos, greenhouses, grain bins, manure handling equipment, and impoundments, but shall not include a structure that encloses a space within its walls used for housing, shelter, or working, office or sales space, whether or not removable.

b. The Director of the Division of Taxation shall adopt, in consultation with the Secretary of Agriculture and in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing criteria for the assessment of all farm structures.

5. Section 13 of P.L.1964, c.48 (C.54:4-23.13) is amended to read as follows:

C.54:4-23.13 Determination of eligibility of land for valuation, assessment, taxation.

13. Eligibility of land for valuation, assessment and taxation under this act shall be determined for each tax year separately. Application shall be submitted by the owner to the assessor of the taxing district in which such land is situated on or before August 1 or September 1, if an extension of time has been granted by the assessor under section 6 of P.L.1964, c.48 (C.54:4-23.6), of the year immediately preceding the tax year for which such valuation, assessment and taxation are sought. If the application is filed by delivery through the mails or a commercial courier or messenger service, compliance with the time limit for filing shall be established if there is satisfactory evidence that it was committed for delivery to the United States Postal Service or the courier or messenger service within the time allowed for filing. In the case of a courier or messenger service, the application shall be received by the tax assessor of the taxing district within three days after the statutory filing date. An application once filed with the assessor for the ensuing tax year may not be withdrawn by the applicant after August 1 or after September 1, in cases where an extension of time for filing the application has been granted by the assessor, of the pretax year.

If a change in use of the land occurs between August 1 and December 31 of the pretax year, either the assessor or the county board of taxation shall deny or nullify such application and, after examination and inquiry, shall determine the full and fair value of said land under the valuation standard applicable to other land in the taxing district and shall assess the same, according to such value. If, notwithstanding such change of use, the land is valued, assessed and taxed under the provisions of this act in the ensuing year, the assessor shall enter an assessment, as an added assessment against such land, in the "Added Assessment List" for the particular year involved in the manner prescribed in P.L.1941, c.397 (C.54:4-63.1 et seq.). The amount of the added assessment shall be in an amount equal to the difference, if any, between the assessment imposed under this act and the assessment which would have been imposed had the land been valued and assessed as other land in the taxing district. The enforcement and collection of additional taxes resulting from any additional assessments so imposed shall be as provided by said chapter. The additional assessment imposed under this section shall not affect the roll-back taxes, if any, under section 8 of this act.

The application review shall include an on-site inspection of the land at least once every three years. The municipality may impose a fee for an on-site inspection of not more than $25, except that contiguous and non-contiguous parcels of land owned by the same owner would be subject to a single fee.

6. Section 1 of P.L.1970, c.237 (C.54:4-23.13b) is amended to read as follows:

C.54:4-23.13b Notice of disallowance.

1. Where an application for valuation hereunder has been filed by the owner of land within the time provided herein, the assessor of the taxing district in which such land is situated shall, on or before November 1 of the pretax year, forward to such owner a notice of disallowance by regular mail when a claim has been disallowed. The assessor shall set forth in reason or reasons therefor together with a statement notifying the landowner of his right to appeal such determination to the county board of taxation on or before April 1 of the tax year. Any appeal made pursuant to this section shall be governed by the procedures provided for appeals in R.S.54:3-21.

7. Section 14 of P.L.1964, c.48 (C.54:4-23.14) is amended to read as follows:

C.54:4-23.14 Application form; contents.

14. Application for valuation, assessment and taxation of land in agricultural or horticultural use under this act shall be on a form prescribed by the Director of the Division of Taxation in the Department of the Treasury, and provided for the use of claimants by the governing bodies of the respective taxing districts. The form of application shall provide for the reporting of information pertinent to the provisions of Article VIII, Section 1, paragraph 1(b) of the Constitution, as amended, and this act. A certification by the landowner that the facts set forth in the application are true may be prescribed by the director to be in lieu of a sworn statement to that effect. Statements so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury. Any landowners, except those who have submitted a woodland management plan pursuant to section 3 of P.L.1964, c.48 (C.54:4-23.3), who is an applicant for valuation, assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.) for lands not previously qualified under the act shall submit with the application a map of land use classes and soil groups that conforms with standards established by the Division of Taxation in consultation with the Secretary of Agriculture. The director shall devise a form for the extension of filing time for the valuation application, which form shall include the name and address of the applicant, the reason for the extension, and a space for the approval or rejection of the assessor.

C.54:4-23.13c Eligibility of land for certain use relative to livestock.

8. If any application for valuation, assessment and taxation under P.L.1964, c.48 (C.54:4-23.1 et seq.) made for the 1993 tax year or later, which was denied based on a determination that the use of land for breeding, boarding, raising, rehabilitating, training or grazing of livestock was not an agricultural use which met the eligibility requirements of section 3 of P.L.1964, c.48 (C.54:4-23.3), and for which an appeal was filed and which is resubmitted after the effective date of P.L.1995, c.276 and approved as a result of the amendments to section 3 of P.L.1964, c.48 (C.54:4-23.3) by section 1 of P.L.1995, c.276, and to section 5 of P.L.1964, c.48 (C.54:4-23.5) by section 2 of P.L.1995, c.276, the land for which the application was made shall be deemed to have been eligible for valuation, assessment, and taxation under

P.L.1964, c.48 as of the first eligible tax year after the application, and the taxing district shall make retroactive payments to the landowner in the amount of the taxes paid which were in excess of the amount payable if taxed under P.L.1964, c.48.

9. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 277

AN ACT concerning the promotion of biotechnology and other high technology industries, supplementing P.L.1981, c.122 (C.52:27H-1 et seq.) and making an appropriation.

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

C.52:9X-9.1 Short title.

1. This act shall be known and may be cited as the "New Jersey High Technology and Biotechnology Industry Promotion Act."

C.52:9X-9.2 Findings, declarations relative to biotechnology, high technology industries.

2. The Legislature finds and declares it to be the policy of this State that:

a. The New Jersey, Philadelphia and New York region contains the second largest concentration of biotechnology companies in the country; and

b. Nationwide, the biotechnology industry has grown from 100 companies in 1970 to over 1200 companies today, employing approximately 140,000 people across the country. Biotechnology industry sales are expected to reach $50 billion by the year 2000; and

c. The continued growth of New Jersey's biotechnology and other high technology industries is integral to the creation of high-skill jobs and the growth of the State's economy in the 1990's and on into the 21st century; and

d. The promotion of New Jersey's high technology industry, including its biotechnology industry, and the attraction to the State of biotechnology and other high technology companies is vital and necessary to the people of this State.

Therefore, it is necessary and important to the economy of this State that a program be established to promote biotechnology and other high technology industries in New Jersey and to attract biotechnology and other high technology companies to the State.

C.52:9X-9.3 Program to promote biotechnology and other industries, established.

3. The New Jersey Commission on Science and Technology, in consultation with the Department of Commerce and Economic Development, shall establish a program to promote biotechnology and other high technology industries in the State and to attract biotechnology and other high technology companies to the State.

The program shall: include research and information on commercial opportunities in biotechnology and high technology; provide technical and financial assistance to biotechnology and high technology companies considering locating in New Jersey; regularly represent or assist in representing the interests of New Jersey based firms in the national and international markets for biotechnology and high technology through conferences and seminars; provide New Jersey based firms with customized technical, financial and other assistance; and recruit capital investment in New Jersey to be applied to the high technology and biotechnology industries.

C.52:9X-9.4 Consultation for program establishment.

4. In establishing the program required by this act, the New Jersey Commission on Science and Technology shall consult with the Biotechnology Council of New Jersey and other representatives of the biotechnology and high technology industries in this State.

C.52:9X-9.5 Ongoing analysis.

5. In order to effectuate the purposes of this act, the New Jersey Commission on Science and Technology shall analyze on an ongoing basis the state of the biotechnology and high technology sectors in New Jersey, including, but not limited to, their strengths and weaknesses, their opportunities and risks, their emerging products, processes, and market niches, the commercialization of their technologies, their capital availability, their education and training needs and their infrastructure development.

6. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 278

AN ACT concerning school elections, supplementing Title 19 of the Revised Statutes and amending and repealing parts of the statutory law.

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

C.19:60-1 Annual school election, adjustments; ballots.

1. a. An annual school election shall be held in each type II district on the third Tuesday in April. However, in any school year, the Commissioner of Education shall make any adjustments to the school budget and election calendar which may be necessary to change the annual school election date if that date coincides with a period of religious observance. The commissioner shall inform local school boards, county clerks and boards of elections of these adjustments no later than the first working day in January of the year in which the adjustments are to occur.

b. All school elections shall be by ballot and, except as otherwise provided by P.L.1995, c.278 (C.19:60-1 et al.), shall be conducted in the manner provided for general elections pursuant to Title 19 of the Revised Statutes. No grouping of candidates or party designation shall appear on any ballot to be used in a school election.

C.19:60-2 Special elections; calling; purposes.

2. a. The board of education of a type II district may call a special election of the legal voters of the district at any time when in its judgment the interests of the schools require it, or whenever 50 of the legal voters shall by petition so request, but no special school election shall be called to be held in any municipality on any day within 20 days before or after the day fixed according to law for the holding of any primary election for the general election or municipal or general election, and no more than two special school elections shall be called by any board of education within any period of six months to submit to the legal voters of the district for their adoption or rejection any proposal, resolution or question authorizing the issuance of bonds of the district, for the same purpose, unless the Commissioner of Education shall first have certified in writing the necessity therefor.

b. No business shall be transacted at any special election except such as shall have been set forth in the notices by which the election was called and in the notices of any special election,

called upon petition as aforesaid, there shall be inserted the purposes named in the petition so far as the same are not in conflict with the provisions of Title 18A of the New Jersey Statutes.

C.19:60-3 District board members to perform election duties.

3. Notwithstanding the provisions of R.S.19:6-1, for school elections the county board of the county in which the election district is located shall designate two members of the district board of election to perform all the duties of the district board for that election, except that where electronic voting systems are in use in any election district in which there are more than 900 registered voters, the county board shall designate four members of the district board to perform all the duties of the district board for that election. Notwithstanding the provisions of R.S.19:6-10, the county board shall appoint one of the persons so designated to serve as judge and the other or another, as the case may be, of those persons so designated to serve as inspector for school elections.

C.19:60-4 Submission of public questions.

4. The secretary of each board of education, not later than 10 o'clock a.m. of the 17th day preceding the annual school election or a special school election, shall make and certify and forward to the clerk of the county in which the school district is located a statement designating any public question to be voted upon by the voters of the district which may be required pursuant to the provisions of P.L.1995, c.278 (C.19:60-1 et al.) or Title 18A of the New Jersey Statutes.

C.19:60-5 Petition of nomination; contents.

5. Notwithstanding the provisions of R.S.19:13-4, each nominating petition for a candidate to be voted upon at a school election shall be addressed to the secretary of the board of education and therein shall be set forth:

a. A statement that the signers of the petition are all qualified voters of the school district or, in the case of a regional school district, qualified voters of the constituent district which the candidate shall represent on the board of education of the regional district;

b. The name, residence and post office address of the person endorsed and the office for which he is endorsed;

c. That the signers of the petition endorse the candidate named in the petition for that office and request that the person's name be printed upon the official ballot to be used at the ensuing election; and

d. That the person so endorsed is legally qualified to be elected to the office.

Any form of a petition of nomination hereunder which is provided to candidates in a school election shall contain the following notice: "Notice: All candidates are required by law to comply with the provisions of 'The New Jersey Campaign Contributions and Expenditures Reporting Act.' For further information, please call (insert phone number of the Election Law Enforcement Commission)."

C.19:60-6 Certificate accompanying nominating petition.

6. Accompanying the nominating petition and to be filed therewith, there shall be a certificate signed by the person endorsed in the petition stating that:

a. The person is qualified to be elected to the office for which the person is nominated, including a specific affirmation that the person is not disqualified as a voter pursuant to R.S.19:4-1;

b. The person consents to stand as a candidate for election; and

c. If elected, the person agrees to accept and qualify into that office.

C.19:60-7 Nomination procedures; withdrawal, vacancy; objections.

7. Each candidate to be voted upon at a school election shall be nominated directly by petition, and the procedures for such nomination shall, to the extent not inconsistent with the provisions of P.L.1995, c.278 (C.19:60-1 et al.), conform to the procedure for nominating candidates by direct petition under chapter 13 of Title 19 of the Revised Statutes. Notwithstanding the provisions of R.S.19:13-5, however, a petition of nomination for such office shall be signed by at least 10 persons, none of whom shall be the candidate himself, and filed with the secretary of the board of education on or before four p.m. of the 50th day preceding the date of the school election. The signatures need not all appear upon a single petition and any number of petitions may be filed on behalf of any candidate but no petition shall contain the endorsement of more than one candidate.

Any candidate may withdraw as a candidate in a school election by filing a notice in writing, signed by the candidate, of such withdrawal with the secretary of the board of education before the 44th day before the date of the election, and thereupon the name of that candidate shall be withdrawn by the secretary of the board of education and shall not be printed on the ballot.

A vacancy created by a declination of nomination or withdrawal by, or death of, a nominee, or in any other manner, shall be ineligible to be filled under the provisions of R.S.19:13-19 or otherwise.

Whenever written objection to a petition of nomination hereunder shall have been made and timely filed with the secretary of

the board of education, the board of education shall file its determination of the objection on or before the 44th day preceding the school election. The last day upon which a candidate may file with the Superior Court a verified complaint setting forth any invasion or threatened invasion of the candidate's rights under the candidate's petition of nomination shall be the 46th day before the election. The last day upon which a candidate whose petition of nomination or any affidavit thereto is defective may amend such petition or affidavit shall be the 44th day before the election.

C.19:60-8 Positions on ballot determined by drawing.

8. Notwithstanding the provisions of R.S.19:14-12, the position which the names of candidates shall have upon the annual school election ballot in each school district shall be determined by the secretary of the board of education by conducting a drawing in the following manner:

a. The drawing shall be done by the secretary of the board of education seven working days following the last day for filing a petition for the nomination of such a candidate. The person making the drawing shall make public announcement at the drawing of each name, the order in which the name is drawn and the term of office for which the drawing is made.

b. A separate drawing shall be made for each full term and for each unexpired term, respectively. The names of the several candidates for whom petitions have been filed for each of the terms shall be written upon paper slips which shall be placed in capsules of the same size, shape, color and substance and then placed in a covered box with an aperture in the top large enough to admit a person's hand and to allow the capsules to be drawn therefrom. The box shall be turned and shaken thoroughly to mix the capsules and the capsules shall be withdrawn one at a time.

c. Where there is more than one person to be elected for a given term of office, the position of the names on the ballots for each term of office shall be determined as above described. The name of the candidate for each term of office first drawn from the box shall be printed directly below the proper term for which the person was nominated and the name of the candidate next drawn shall be printed next in order, and so on, until the last name shall be drawn from the box.

The secretary of the board of education shall, within two days following the drawing, certify to the county clerk the results of the drawing.

C.19:60-9 Ballot, form, contents.

9. The ballot for a school election shall be a single or blanket form of ballot, upon which shall be printed in bold-faced type the words "OFFICIAL SCHOOL ELECTION BALLOT" or "OFFICIAL SPECIAL SCHOOL ELECTION BALLOT," as appropriate. Any public question which is to be submitted to the voters at a school election shall be printed in a separate space below or to the right of, as the county clerk shall determine, the listing of candidates in the election.

In the columns in which are listed the titles of the offices to be filled at a school election and the names of candidates for those offices, the title of and the names of candidates for the office of member of the regional board of education shall appear above the title of and the names of candidates for the office of member of the local board of education. With respect to either office, in the event that one or more persons are to be elected to membership thereon for a full term and one or more persons are to be elected to membership thereon to fill an unexpired term, the ballots shall designate which of the candidates to be voted for is to be elected for a full term and which for an unexpired term. In all cases in which one or more persons are to be elected for an unexpired term, the ballots shall indicate the duration of that unexpired term.

All public questions to be voted upon at a school election by the voters of more than one municipality shall be placed first before any question to be voted upon at that election by the voters of a single municipality.

Every county clerk shall have ready for the printer a copy of the contents of official ballots required by law to be printed for use at a school election, as follows: in the case of the annual school election, not later than the 17th day preceding that election; and in the case of any special school election, not later than two business days following receipt by the clerk of official notice of the complete content of the ballot to be voted upon at that election.

C.19:60-10 Printing of sample ballots.

10. The county clerk shall cause samples of the official school election ballot to be printed in the same manner as prescribed for the printing of sample ballots for the general election by R.S.19:14-21. In counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, the delivery of such sample ballots for mailing, issuance of a receipt

for such delivery, and the mailing of sample ballots shall be effected in the same manner as prescribed for the sample ballot for the general election under subsection a. of R.S.19:14-21; and in counties having a superintendent of elections and in other counties where the county board of elections may have such equipment or facilities, the delivery of ballots for mailing, issuance of a receipt for such delivery, and the mailing of sample ballots shall be effected in the same manner as prescribed for the sample ballot for the general election under subsection b. of R.S.19:14-21, subject to the condition that the latest time at which the county clerk may furnish sample ballots for mailing shall be the eighth day preceding the school election.

C.19:60-11 Use of poll list in lieu of signature copy register.

11. The district board of election shall, for any school election, utilize a poll list instead of the signature copy register. The poll list shall be arranged in a column or columns appropriately headed so as to indicate the election, the date thereof, and the school district and election district in which the same is used, in such a manner that each voter voting in the polling place at the election may sign the voter's name and state the voter's address therein and the number of the voter's official ballot may be indicated opposite the signature. The district board shall compare the signature in the poll lists with that in the signature copy registers before accepting the ballot.

C.19:60-12 Expenses.

12. All costs, charges and expenses, including the compensation of the members of the district boards and the compensation and expenses of the county board of elections, the county superintendent of elections and the clerk of the county for any school election shall be paid by the board of education of the school district. All costs, charges and expenses submitted to the board of education for payment shall be itemized and shall include the separate identification of costs to prepare, print and distribute sample ballots.

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

Definitions.

19:1-1. As used in this Title:

"Election" means the procedure whereby the electors of this State or any political subdivision thereof elect persons to fill public office or pass on public questions.

"General election" means the annual election to be held on the first Tuesday after the first Monday in November.

"Primary election" means the procedure whereby the members of a political party in this State or any political subdivision thereof nominate candidates to be voted for at general elections, or elect persons to fill party offices, or delegates and alternates to national conventions.

"Municipal election" means an election to be held in and for a single municipality only, at regular intervals.

"Special election" means an election which is not provided for by law to be held at stated intervals.

"Any election" includes all primary, general, municipal, school and special elections, as defined herein.

"Municipality" includes any city, town, borough, village, or township.

"School election" means any annual or special election to be held in and for a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes.

"Public office" includes any office in the government of this State or any of its political subdivisions filled at elections by the electors of the State or political subdivision.

"Public question" includes any question, proposition or referendum required by the legislative or governing body of this State or any of its political subdivisions to be submitted by referendum procedure to the voters of the State or political subdivision for decision at elections.

"Political party" means a party which, at the election held for all of the members of the General Assembly next preceding the holding of any primary election held pursuant to this Title, polled for members of the General Assembly at least 10% of the total vote cast in this State.

"Party office" means the office of delegate or alternate to the national convention of a political party or member of the State, county or municipal committees of a political party.

"Masculine" includes the feminine, and the masculine pronoun wherever used in this Title shall be construed to include the feminine.

"Presidential year" means the year in which electors of President and Vice-President of the United States are voted for at the general election.

"Election district" means the territory within which or for which there is a polling place or room for all voters in the territory to cast their ballots at any election.

"District board" means the district board of registry and election in an election district.

"County board" means the county board of elections in a county.

"Superintendent" means the superintendent of elections in counties wherein the same shall have been appointed.

"Commissioner" means the commissioner of registration in counties.

"File" or "filed" means deposited in the regularly maintained office of the public official wherever said regularly maintained office is designated by statute, ordinance or resolution.

14. R.S.19:3-2 is amended to read as follows:

Filling of public offices, vacancies; public questions; exceptions.

19:3-2. All elective public offices in this State or any of its political subdivisions, except such as are provided by law to be filled at special, municipal or school elections, shall be filled at the general elections as hereinafter provided. All vacancies in public offices to be filled by election, except such as are provided by law to be filled at special or municipal elections, shall be filled at the general elections. All public questions to be voted upon by the people of the entire State and all other public questions, except such as are provided by law to be decided at any other elections, shall be voted upon and decided at the general elections.

15. R.S.19:6-12 is amended to read as follows:

Member becoming candidate.

19:6-12. The office of a member of a district board in an election district shall be deemed vacant upon such member becoming a candidate for an office to be voted upon at any primary, general election, school election, or special election for which he was appointed to serve, such candidacy to be determined by the filing of a petition of nomination, duly accepted by such member, in the manner provided by law. The municipal or county clerk with whom such petition and acceptance may be filed shall forthwith notify the county board of the county in which such election district is located, giving the name and residence of the member of the district board who has thus become a candidate, and the vacancy shall be filled as provided by law.

16. R.S.19:12-7 is amended to read as follows:

Publication of notice of elections.

19:12-7. a. The county board in each county shall cause to be published in a newspaper or newspapers which, singly or in combination, are of general circulation throughout the county, a notice containing the information specified in subsection b. hereof, except for such of the contents as may be omitted pursuant to subsection c. or d. hereof. Such notice shall be published once during the 30 days next preceding the day fixed for the clos-

ing of the registration books for the primary election, once during the calendar week next preceding the week in which the primary election is held, once during the 30 days next preceding the day fixed for the closing of the registration books for the general election, and once during the calendar week next preceding the week in which the general election is held.

b. Such notice shall set forth:

(1) For the primary election:

(a) That a primary election for making nominations for the general election, for the selection of members of the county committees of each political party, and in each presidential year for the selection of delegates and alternates to national conventions of political parties, will be held on the day and between the hours and at the places provided for by or pursuant to this Title.

(b) The place or places at which and hours during which a person may register; the procedure for the transfer of registration, and the date on which the books are closed for registration or transfer of registration.

(c) The several State, county, municipal and party offices or positions to be filled, or for which nominations are to be made, at such primary election.

(d) The existence of registration and voting aids, including: (i) the availability of registration and voting instructions at places of registration as provided under R.S.19:31-6; and (ii), if available, the accessibility of voter information to the deaf by means of a telecommunications device.

(e) The availability of assistance to a person unable to vote due to blindness, disability or inability to read or write.

(2) For the general election:

(a) That a general election will be held on the day and between the hours and at the places provided for by or pursuant to this Title.

(b) The place or places at which and hours during which a person may register; the procedure for transfer of registration, and the date on which the books are closed for registration or transfer of registration.

(c) The several State, county and municipal offices to be filled and, except as provided in section 19:14-33 of this Title as to publication of notice of any Statewide proposition directed by the Legislature to be submitted to the people, the State, county and municipal public questions to be voted upon at such general election.

(d) The existence of registration and voting aids, including: (i) the availability of registration and voting instructions at places of registration as provided under R.S.19:31-6; and (ii) the accessibility of voter information to the deaf by means of a telecommunications device.

(e) The availability of assistance to a person unable to vote due to blindness, disability or inability to read or write.

(3) For a school election:

(a) The day, time and place thereof,

(b) The offices, if any, to be filled at the election,

(c) The substance of any public question to be submitted to the voters thereat,

(d) Such other information as may be required by law.

c. If such publication is made in more than one newspaper, it shall not be necessary to duplicate in the notice published in each such newspaper all the information required under this section, so long as:

(1) The municipal officers or party positions to be filled, or nominations made, or municipal public questions to be voted upon by the voters of any municipality, shall be set forth in at least one newspaper having general circulation in such municipality;

(2) All offices to be filled, or nominations made therefor, or public questions to be voted upon, by the voters of the entire State or of the entire county shall be set forth in a newspaper or newspapers which, singly or in combination, have general circulation throughout the county;

(3) Information relating to nominations and elections in each Legislative District comprised in whole or part in the county, shall be published in at least a newspaper or newspapers which singly or in combination, have general circulation in every municipality of the county which is comprised in such legislative district.

d. Such part or parts of the original notices as published which pertain to day of registration or primary election which has occurred shall be eliminated from such notice in succeeding insertions.

e. Notwithstanding anything to the contrary in this section, in a school election the county board shall give notice of each election not less than 10 days prior to the date fixed for the election, by posting at least seven copies of the notice, one on each schoolhouse in the district and the others at such public places therein as the board shall direct and causing a copy thereof to be published at least once, in at least one newspaper published in each municipality in the district and, if no newspaper is published in any such municipality or such a newspaper will not be published in time to publish the notice in accordance with this section, then, as to the municipality, in at least one newspaper published in the county or State and circulating in the municipality.

f. The cost of publishing the notices required by this section shall be paid by the respective counties, or for school elections, by the respective school district.

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

Official general election, school election ballot specification.

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

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

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

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

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

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

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

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

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

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

18. 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 seven o'clock in the morning and close them at eight o'clock in the evening, 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 five and nine P.M. and during any additional time which the school board may designate between the hours of seven A.M. and nine 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 one o'clock and five o'clock in the afternoon 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 two members of each district election board present.

19. R.S.19:17-3 is amended to read as follows:

Filing of statements.

19:17-3. After the district board shall have made up and certified such statements, it shall at the same time and with the ballot boxes, as hereinafter provided, deliver or safely transmit one of the statements to the clerk of the municipality wherein such election is held, who shall forthwith file the same. In counties having a superintendent of elections one of such statements shall forth-

with be filed with the superintendent of elections of the county. The superintendent may arrange to accept such certificates in such municipality within the county at the office of the clerk of such municipality or some other convenient place. Any municipal clerk who shall refuse to permit such superintendent or his deputies or assistants access to his office for the purpose of collecting such certificates or any municipal clerk or other person who shall interfere or obstruct the superintendent, his deputies or assistants in the collection of such certificates, or any member of a district board who shall willfully fail or refuse to deliver such statement to the superintendent, his deputies or assistants as the case may be, shall be guilty of a misdemeanor. In all counties the board shall, immediately after election, deliver or safely transmit another of the statements to the clerk of the county, who shall forthwith file the same.

For a school election a statement shall also be delivered to the board of education of the district holding the election and to the county superintendent of schools in the county in which the district is situated.

If officers were voted for or public questions were voted upon at the election by the voters of the entire State or of more than one county thereof, or of a congressional district, then the board shall, immediately after the election, inclose, seal up and transmit the fourth statement to the Secretary of State by mail in stamped envelopes to be furnished by the Secretary of State, addressing the same in the following manner: "To the Secretary of State of New Jersey, Trenton, New Jersey." Upon receiving such statements the Secretary of State shall forthwith file the same in his office.

20. Section 2 of P.L.1994, c.170 (C.19:31-3.3) is amended to read as follows:

C.19:31-3.3 Digitalized images of signatures, use.

2. In those counties in which the commissioner of registration employs data processing equipment capable of creating or receiving, storing, and printing a digitalized image of the signature of a person registered to vote, the commissioner may eliminate the use of the duplicate permanent registration binders and may authorize and direct the use at the polls in place of such a binder, as a signature copy register for the purposes of this Title and Title 40 of the Revised Statutes, of a polling record which identifies on each page the election at which the record is used, which indicates for each registrant the name and address of the registrant and identifies the municipality and the particular election district therein

from which the person is registered, and which includes adjacent to the registrant's name and address an imprint of the digitalized image of the registrant's signature and sufficient space, immediately to the left or right of that imprint, for the registrant to sign the record, which imprint and signature shall be used as the signature comparison record as prescribed by this Title. The polling record shall also include for each registrant sufficient space for the notation of remarks as provided by R.S.19:15-23 and for the recording of any challenge and the determination thereof by the district board as provided by R.S.19:15-24, or by other elections officials charged with the same duties as the district board in connection with the conduct of an election. In the case of a primary election, the polling record shall also indicate for each registrant the political party, if any, of which the registrant is a member for the purpose of voting at that primary election.

Polling records for each election shall be prepared by the commissioner of registration not later than the 14th day preceding the election. At each election, the delivery of the polling records to the municipal clerk or secretary of the board of education in a Type II school district, as appropriate, and to the district boards or other elections officials charged with the same duties as the district board in connection with the conduct of an election, and the return of those records by the district boards or such other elections officials to the commissioner of registration, shall be made in the manner and in accordance with the schedule prescribed by law for the delivery and return at that election of the signature copy registers.

The commissioner of registration shall retain the polling records for any election for a period of not less than six years following that election.

21. 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, $75 each time the primary election, the general election or any special elec-

tion is held under this Title, except that the governing body of a county may, by ordinance or resolution as appropriate, provide that such amount shall be $100 for the members of each district board within the county performing those services at such an election; 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, exclusive of any adjustments to that compensation which may be made pursuant to subsection a., b. or c. of this section.

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.

22. Section 2 of P.L.1953, c.211 (C.19:57-2) is amended to read as follows:

C.19:57-2 Definitions.

2. Whenever used in this act, the following terms shall, unless the context indicates otherwise, be construed to have the following meanings:

"Absentee ballot" means any military service ballot or civilian absentee ballot as herein defined.

"Absentee voter" means any person qualified to vote a military service ballot or a civilian absentee ballot under the provisions of this act.

"Armed Forces of the United States" means any branch or department of the United States Army, Navy, Air Force, Coast Guard or Marine Corps.

"Civilian absentee ballot" means a ballot for use by a civilian absentee voter as prescribed by this act.

"Civilian absentee voter" means any qualified and registered voter of the State who expects to be absent from the State on the day of any election and any qualified and registered voter who will be within the State on the day of any election but because of illness or physical disability, including blindness or pregnancy, or because of the observance of a religious holiday pursuant to the tenets of his religion, or because of resident attendance at a school, college or university, or because of the nature and hours of his employment, will be unable to cast his ballot at the polling place in his election district on the day of the election.

"Election," "general election," "primary election for the general election," "municipal election," "school election," and "special election" shall mean, respectively, such elections as defined in the Title to which this is a supplement (R.S.19:1-1 et seq.).

"Family member" means an adult who is a spouse, parent, child, grandparent, grandchild or sibling of a voter, whether by adoption or natural relationship. It shall also include any adult occupant regularly living with a voter in any residential building or part of a building intended for the use of no more than one family.

"Incapacitated absentee voter" means a voter who, due to incapacity, is unable to complete his ballot.

"Military service" means active service by any person, as a member of any branch or department of the United States Army, Navy, Air Force, Coast Guard or Marine Corps, or as a member of the maritime or merchant marine service, or as a reservist absent from his place of residence and undergoing training under Army, Navy, Air Force, Coast Guard or Marine Corps direction, at a place other than that of such person's residence.

"Military service voter" means a qualified elector under the Constitution and the laws of this State who comes within one of the following categories:

(a) Persons in the military service and their spouses and dependents.

(b) Patients in a veterans' hospital located in any place other than the place of their residences who have been in the military service in any war in which the United States has been engaged and have been discharged or released from such service.

(c) Civilians attached to or serving with the Armed Forces of the United States without this State and their spouses and dependents when residing with or accompanying them.

"Military service ballot" means a ballot for use by a military service voter as prescribed by this act.

"Member of the maritime or merchant marine service" means any person employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States or enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service as an officer or crew member of any such vessel or any such person as otherwise defined in section 107 of Pub.L. 99-410, the "Uniformed and Overseas Citizens Absentee Voting Act," (42 U.S.C.§1973ff-6).

23. Section 7 of P.L.1953, c.211 (C.19:57-7) is amended to read as follows:

C.19:57-7 Absentee ballots.

7. The county clerk of the county, in the case of any Statewide election, countywide election, or school election in a regional or other school district comprising more than one municipality; the clerk of the municipality, in the case of any municipal election or school election in a school district comprising a single municipality; and the commissioners or other governing or administrative body of the district, in the case of any election to be held in any fire district, road district, sewerage district, street lighting district, water supply district or other special district, other than a municipality, created for specified public purposes within one or more municipalities, shall publish or cause to be published the following notices in substantially the following forms:

NOTICE TO MILITARY SERVICE VOTERS AND
TO THEIR RELATIVES AND FRIENDS

If you are in the military service, or the spouse or dependent of a person in military service or are a patient in a veterans' hospital or a civilian attached to or serving with the Armed Forces of the United States without the State of New Jersey, or the spouse or

dependent of and accompanying or residing with a civilian attached to or serving with the Armed Forces of the United States, and desire to vote, or if you are a relative or friend of any such person who, you believe, will desire to vote in the..... (school, municipal, primary, general or other) election to be held on ..... (date of election) kindly write to the undersigned at once making application for a military service ballot to be voted in said election to be forwarded to you, stating your name, age, serial number if you are in military service, home address and the address at which you are stationed or can be found, or if you desire the military service ballot for a relative or friend then make application under oath for a military service ballot to be forwarded to him, stating in your application that he is over the age of 18 years and stating his name, serial number if he is in military service, home address and the address at which he is stationed or can be found.

Military service voters may also apply for a military service ballot by sending a federal postcard application form to the undersigned.

On the application for a military service ballot, military service voters may request that a military service ballot be sent for all subsequent elections held during this calendar year.

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

Forms of application other than federal postcard application forms can be obtained from the undersigned.

Dated ....
(signature and title of county clerk)

.....
(address of county clerk)

NOTICE TO PERSONS DESIRING CIVILIAN ABSENTEE BALLOTS

If you are a qualified and registered voter of the State who expects to be absent outside the State on .....(date of election) or a qualified and registered voter who will be within the State on ..... (date of election) but because of permanent and total disability, or because of illness or temporary physical disability, or because of the observance of a religious

holiday pursuant to the tenets of your religion, or because of resident attendance at a school, college, or university, or because of the nature and hours of employment, will be unable to cast your ballot at the polling place in your district on said date, and you desire to vote in the ..... (school, municipal, primary, general, or other) election to be held on ..... (date of election) kindly complete the application form below and send to the undersigned, or write or apply in person to the undersigned at once requesting that a civilian absentee ballot be forwarded to you. Such request must state your home address, and the address to which said ballot should be sent, and must be signed with your signature, and state the reason why you will not be able to vote at your usual polling place. No civilian absentee ballot will be furnished or forwarded to any applicant unless request therefor is received not less than seven days prior to the election, and contains the foregoing information.

Voters who are permanently and totally disabled shall, after their initial request and without further action on their part, be forwarded an absentee ballot application by the county clerk for all future elections in which they are eligible to vote. Application forms may be obtained by applying to the undersigned either in writing or by telephone, or the application form provided below may be completed and forwarded to the undersigned.

Dated ....
(signature and title of county clerk)

.....
(address of county clerk)

.....
(Telephone No. of county clerk)

APPLICATION FORM FOR CIVILIAN ABSENTEE BALLOT
(Form to be prepared by the Secretary of State pursuant to section 17 of P.L.1977, c.47 (C.19:57-4.1)).

Such notices shall be separately published prior to the 50th day immediately preceding the holding of any election.

Notices relating to any Statewide or countywide election shall be published by the county clerk in at least two newspapers published in the county. All other officials charged with the duty of publishing such notices shall publish the same in at least one

newspaper published in each municipality or district in which the election is to be held or if no newspaper be published in said municipality or district, then in a newspaper published in the county and circulating in such municipality, municipalities or district. All such notices shall be display advertisements.

24. N.J.S.18A:6-9 is amended to read as follows:

Controversies, disputes arising under school laws; jurisdiction.

18A:6-9. The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

25. Section 16 of P.L.1987, c.399 (C.18A:7A-49) is amended to read as follows:

C.18A:7A-49 Reestablishment of local control.

16. a. The State district superintendent shall annually provide to the commissioner an assessment of the progress of the district toward meeting the requirements necessary for State certification. In addition, the commissioner shall ensure that the district is regularly monitored by the Department of Education in the manner provided for all school districts in level III monitoring pursuant to section 14 of P.L.1975, c.212 (C.18A:7A-14). The commissioner shall formally report to the State board and to the Governor and the Legislature on the district's progress.

b. Based upon the annual assessment of progress and the district's having received State certification, but not sooner than five years after the establishment of the State-operated school district, the commissioner may recommend to the State board that local control be reestablished. If the State board so determines, local control shall be reestablished effective on the July 1 next ensuing.

c. Upon the reestablishment of local control, the board of education shall assume full responsibility for the operation of the school district; however, the State district superintendent and those members of the superintendent's staff appointed by operation of these laws relating to State-operated school districts shall continue to serve for a one-year transition period upon conclusion of which their term of service shall expire without prejudice to the right of the district board of education to reappoint any or all such persons

to similar positions within the district. During the transition period, the State district superintendent may place matters before the board for a vote. The board of education shall act upon all such matters brought before it by the State district superintendent.

d. Not more than one year following the reestablishment of local control, the board shall call a special election for purposes of placing the question of classification status before the voters of the district, which election shall be conducted in accordance with the provisions of Title 19 of the Revised Statutes concerning school elections.

e. If the voters of the district shall elect to become a type I district, it shall be governed by the provisions of chapter 9 of Title 18A of the New Jersey Statutes relating to type I districts after January 31 next ensuing, unless the district is established in a city of the first class, in which case it shall be governed after June 30 next ensuing. The members of the district board of education at the time of said election shall continue in office until expiration of their respective terms and the qualification in office of their successors.

f. If the voters of the district shall so select that the district shall become a type II district, it shall be governed by the provisions of chapter 9 of Title 18A relating to type II districts and the members of the board of education at the time of said election shall remain and continue in office until the expiration of their respective terms and the qualification of their respective successors.

g. If the commissioner cannot recommend that local control be reestablished in a district five years after the establishment of a State-operated school district, then the commissioner shall provide a comprehensive report to the State board and to the Governor and the Legislature, including a detailed analysis of the causes for the failure of the district to achieve certification and an assessment of the amount of time necessary for the continuation of the State-operated school district. On the basis of that report the State board shall determine whether to continue the State-operated school district or return the district to local control pursuant to this section.

26. N.J.S.18A:8-20 is amended to read as follows:

Powers, duties of first boards of education of new, remaining districts.

18A:8-20. The first board of education of the new district and the first board of education of the remaining district shall each prepare and submit, to the voters of the district, as required by law, the first budgets for said district and they shall make proper provision for an election to be conducted, in accordance with the

provisions of P.L.1995, c.278 (C.19:60-1 et al.), for the members of the board of education of the district to replace the appointed members of the board, for such terms that three members of the board of the district, as thereafter constituted, will be elected each year, at an annual election to be held in the district at the same time as that on which the next annual election for the original district would have been held.

27. N.J.S.18A:8-36 is amended to read as follows:

Appropriations authorized by majority of votes cast.

18A:8-36. At all elections any appropriation must be authorized by a majority of the total votes cast thereon in all of the territory of the consolidated school district.

28. N.J.S.18A:9-10 is amended to read as follows:

Electing additional board members.

18A:9-10. If the membership of the board in any such district so becoming a type II district is less than nine, it shall be increased to nine by the election of added members at the next annual school election, unless the adopting election shall have been held more than 130 days or less than 60 days before the date fixed for such annual school election, in which case they shall be elected at a special school election which shall be called by the members of the board so holding over, if the adopting election was held more than 130 days before the annual school election, then not less than 60 or more than 70 days after the adopting election, or if the adopting election was held less than 60 days before the annual school election, then not less than 60 or more than 70 days after such annual school election, excluding in each instance from the calculation of the period which will elapse between such 60 and 70 days any period which would elapse between the twenty-first day before and the twenty-first day after any day fixed according to law for the holding of any primary election for the general election or general election or municipal election held within the district.

29. N.J.S.18A:12-15 is amended to read as follows:

Filling vacancies.

18A:12-15. Vacancies in the membership of the board shall be filled as follows:

a. By the county superintendent, if the vacancy is caused by the absence of candidates for election to the school board or by

the removal of a member because of lack of qualifications, or is not filled within 65 days following its occurrence:

b. By the county superintendent, to a number sufficient to make up a quorum of the board if, by reason of vacancies, a quorum is lacking;

c. By special election, if in the annual school election two or more candidates qualified by law for membership on the school board receive an equal number of votes. Such special election shall be held only upon recount and certification by the county board of elections of such election result, shall be restricted to such candidates, shall be held within 60 days of the annual school election, and shall be conducted in accordance with procedures for annual and special school elections set forth in Title 19 of the Revised Statutes. The vacancy shall be filled by the county superintendent if in such special election two or more candidates qualified by law for membership on the school board receive an equal number of votes;

d. By special election if there is a failure to elect a member at the annual school election due to improper election procedures. Such special election shall be restricted to those persons who were candidates at such annual school election, shall be held within 60 days of such annual school election, and shall be conducted in accordance with the procedures for annual and special school elections set forth in Title 19 of the Revised Statutes;

e. By the commissioner if there is a failure to elect a member at the annual school election due to improper campaign practices; or

f. By the board in all other cases.

Each member so appointed shall serve until the organizational meeting following the next annual election unless he is appointed to fill a vacancy occurring within the 60 days immediately preceding such election to fill a term extending beyond such election, in which case he shall serve until the organizational meeting following the second annual election next succeeding the occurrence of the vacancy, and any vacancy for the remainder of the term shall be filled at the annual election or the second annual election next succeeding the occurrence of the vacancy as the case may be.

30. Section 1 of P.L.1987, c.161 (C.18A:12-19.1) is amended to read as follows:

C.18A:12-19.1 Decrease of term; voter's decision.

1. If the board of education of a school district organized pursuant to subarticle C of Article 4 of Chapter 12 of Title 18A of the New Jersey Statutes shall determine by resolution that it is in

the best interest of the public schools of the district that the terms of the members of the board shall be decreased from five years to three years, the question shall be submitted to the voters of the district at the next annual school election and the question shall be stated in the notice of the election prepared pursuant to R.S.19:12-7.

31. N.J.S.18A:13-5 is amended to read as follows:

Conduct of regional district elections, votes required.

18A:13-5. Elections in regional districts shall be conducted as in other local districts except that in any such elections, unless otherwise provided by this Title, the total vote of the entire regional district, without regard to the territorial boundaries of the constituent districts, shall be counted in determining the result of the election.

In any case in which a proposal for the creation of a regional district or for the enlargement of a regional district is submitted, such proposal shall be adopted only if a majority of the votes cast thereon

a. In each of the local districts, other than a consolidated district, proposing to form the regional district,

b. In the consolidated district proposing to form the regional district without regard to the territorial boundaries of the constituent districts, or

c. In the regional district to be enlarged, and in each district proposed to enlarge it,

shall be cast in favor of the adoption of such proposal.

32. N.J.S.18A:13-10 is amended to read as follows:

Annual elections.

18A:13-10. The board of education of each regional district shall provide for the holding, in accordance with the provisions of P.L.1995, c.278 (C.19:60-1 et al.), of an annual school election for the regional district on the third Tuesday in April.

At such election there shall be elected for terms of three years, beginning on any day of the first or second week following such election, the members of the regional boards of education to succeed those members of the board whose terms shall expire in that year, except as is in this chapter provided for the election of the first elected members of the board.

33. N.J.S.18A:13-34 is amended to read as follows:

Creation of regional school district, apportionment of appropriations.

18A:13-34. If the boards of education of two or more local districts, or the board of education of a consolidated district, or of a district comprising two or more municipalities, and the commis-

sioner or his representative, after consultation, study and investigation, shall determine, that it is advisable for such districts to join and create, or for such district to become

(a) an all purpose regional school district for all the school purposes of such districts or district, or

(b) a limited purpose regional school district to provide and operate, in the territory comprised within such local districts or district, one or more of the following: elementary schools, junior high schools, high schools, vocational schools, special schools, health facilities or particular educational services or facilities, that board or boards shall by resolution frame and adopt a proposal to that effect stating also the manner in which the amounts to be raised for annual or special appropriations for such proposed regional school district, including the amounts to be raised for interest upon, and the redemption of bonds payable by the regional district, shall be apportioned upon the basis of:

a. the portion of each municipality's equalized valuation allocated to the regional district, calculated as described in the definition of equalized valuation in section 3 of P.L.1990, c.52 (C.18A:7D-3);

b. the proportional number of pupils enrolled from each municipality on the 15th day of October of the prebudget year in the same manner as would apply if each municipality comprised separate constituent school districts; or

c. any combination of apportionment based upon equalized valuations pursuant to subsection a. of this section or pupil enrollments pursuant to subsection b. of this section, and each such board shall call for a special school election to be held upon the same day in each municipality in its district and shall submit thereat the question whether or not the proposal shall be approved, briefly describing the contents of the resolution and stating the date of its adoption and they may submit also, at the special election, as part of such proposal, any other provisions which may be submitted, at such a special election, under the provisions of this chapter but no such special election shall be held on any day before April 15 or after December 1 of any calendar year. Except as otherwise provided herein, the special election shall be conducted in accordance with the provisions of P.L.1995, c.278 (C.19:60-1 et al.).

34. N.J.S.18A:17-7 is amended to read as follows:

Notices, minutes, special meetings.

18A:17-7. The secretary shall give notice of all regular or special meetings of the board to the members thereof and record the

minutes of all proceedings of the board and the results of any annual or special school election in suitable minute books.

35. Section 21 of P.L.1990, c.52 (C.18A:7D-26) is amended to read as follows:

C.18A:7D-26 Notification of maximum amount of aid payable.

21. Annually, within two days following the transmittal of the budget message to the Legislature by the Governor pursuant to section 11 of P.L.1944, c.112 (C.52:27B-20), the commissioner shall notify each district of the maximum amount of aid payable to the district under the provisions of P.L.1990, c.52 (C.18A:7D-1 et al.) in the succeeding year and shall notify each district that is subject to the provisions of section 85 of P.L.1990, c.52 (C.18A:7D-28) of the district's maximum permissible local levy budget for the succeeding year. The actual aid payment to each district shall be determined after the district's budget is adopted.

36. Section 22 of P.L.1990, c.52 (C.18A:7D-27) is amended to read as follows:

C.18A:7D-27 Proposed budgets to commissioner.

22. Annually, on or before March 4, local boards of education shall submit to the commissioner a copy of their proposed budgets for the next school year. The commissioner shall review each item of appropriation within the current expense and capital outlay sections of the general fund budget and shall determine the adequacy of the budget with regard to the annual reports submitted pursuant to section 11 of P.L.1975, c.212 (C.18A:7A-11) and such other criteria as may be established by the State board.

37. N.J.S.18A:22-7 is amended to read as follows:

Budgets; preparation.

18A:22-7. The board of education of every school district having a board of school estimate shall prepare and deliver to each member of the board of school estimate, on or before March 22 in each year, and the board of education of every other school district shall prepare a budget for the school district for the ensuing year, on or before March 22.

38. Section 17 of P.L.1987, c.399 (C.18A:7A-50) is amended to read as follows:

C.18A:7A-50 Budget, development, presentation.

17. The State district superintendent of a State-operated school district shall develop a budget on or before March 22 and shall present this budget to the board of education to elicit the board's comments and recommendations. This budget shall conform in all respects with the requirements of chapter 22 of Title 18A of the New Jersey Statutes and shall be subject to the limitations on spending by local school districts otherwise required by P.L.1990, c.52 (C.18A:7D-1 et al.).

39. N.J.S.18A:22-10 is amended to read as follows:

Fixing date, etc., for public hearing.

18A:22-10. Upon the preparation of its budget, each board of education shall fix a date, place and time for the holding of a public hearing upon said budget and the amounts of money necessary to be appropriated for the use of the public schools for the ensuing school year and the various items and purposes for which the same are to be appropriated. In districts having a board of school estimate, the hearing shall be held before the board of school estimate between March 22 and March 29 and in districts having no board of school estimate the hearing shall be held before the board of education between March 22 and March 29.

40. Section 18 of P.L.1987, c.399 (C.18A:7A-51) is amended to read as follows:

C.18A:7A-51 Public hearing.

18. Upon the preparation of its budget, the State district superintendent shall fix a date, place and time for the holding of a public hearing upon the budget and the amounts of money necessary to be appropriated for the use of the public schools for the ensuing school year, and the various items and purposes for which the same are to be appropriated, which hearing shall be held between March 22 and March 29. Notice of the hearing, contents of the notice and the format and purpose of the hearing shall be as provided in N.J.S.18A:22-11, N.J.S.18A:22-12 and N.J.S.18A:22-13.

41. N.J.S.18A:22-11 is amended to read as follows:

Notice of public hearing.

18A:22-11. The board of education shall cause notice of such public hearing and the statement annexed to the budget to be published at least once in at least one newspaper published in the district and if no newspaper be published therein, then in at least

one newspaper circulating in said district not less than four days prior to the date fixed for such public hearing.

42. N.J.S.18A:22-32 is amended to read as follows:

Appropriation determination for certain type II districts.

18A:22-32. At or after the public hearing on the budget but not later than 18 days prior to the election, the board of education of each type II district having no board of school estimate shall fix and determine by a recorded roll call majority vote of its full membership the amount of money to be voted upon by the legal voters of the district at the annual election, which sum or sums shall be designated in the notice calling such election as required by law.

43. Section 3 of P.L.1995, c.236 (C.18A:7E-8) is amended to read as follows:

C.18A:7E-8 Administrative spending; penalties; appeals.

3. a. Any school district whose budgeted per pupil administrative spending for the preceding school year exceeds the median budgeted per pupil administrative spending for the preceding school year for districts of the same operating type by the percentage indicated in subsection c. of this section shall have its school aid reduced by the dollar amount of the excess. The penalty shall not exceed 10% of the district's budgeted administrative spending. All school districts shall be notified of their per pupil administrative costs and the applicable median per pupil cost by October 1 of the year preceding the affected year, and any adjustments caused by subsequent restorations of municipal reductions or proposals to exceed the permissible maximum net budget shall be made no later than November 1 of that year.

b. Administrative spending shall include expenditures for improvement of instruction services and other support services - instructional staff; support services-general administration; support services-school administration; business and other support services, including salaries, purchased professional services, purchased technical services, other purchased services, supplies and materials, interest on current loans, and miscellaneous expenditures; and the prorata share of fringe benefits for salaries included in the preceding categories for the employer's share of Social Security, pension payments other than for the Teachers' Pension and Annuity Fund, unemployment compensation, and other generally recognized employee benefits. Administrative spending shall

not include expenditures for in-service teacher training and professional development or for the preparation, printing and mailing of sample ballots. The amount of any judgments against the school district shall be deducted from the total amount of expenditures. All expenditures shall be based originally upon the district's budgeted data of the preceding year and adjusted in the subsequent year based upon audited data; however, the median budgeted per pupil administrative spending calculated for districts of the same operating type pursuant to subsection a. of this section shall not be recalculated.

c. The percentage shall equal 129% in the first year of implementation, 128% in the second year, 127% in the third year, 126% in the fourth year and 125% in the fifth year and each succeeding year.

d. A school district may appeal a penalty imposed pursuant to this section to the Commissioner of Education. The appeal shall be based on the following factors:

(1) an error made by the Department of Education in calculating the administrative spending of the school district;

(2) an error made by the school district in reporting data to the department;

(3) costs associated with services provided by a school district to other districts in joint educational or service arrangements other than a sending-receiving relationship; and

(4) any other factor deemed appropriate by the commissioner.

44. N.J.S.18A:24-29 is amended to read as follows:

Issuance of bonds; ordinance, submission to voters.

18A:24-29. A proposal for the confirmation of any ordinance, required by this article to be approved by the qualified voters of the municipality comprised within a district, shall be submitted to such voters at a general, special or municipal election to be held therein, whenever the governing body of the municipality shall have, by resolution or ordinance, directed that the same be so submitted and, in the case of a special election, specified the day, which shall be not less than 41 days after the passage of such ordinance, and the time thereof, the place or places thereof and the polling districts therefor by reference to the general election districts established and used in the municipality, and the hours (which need include only four consecutive hours) during which the polls at such election shall be open. It shall be the duty of the clerk of the municipality to give notice of any such election, set-

ting forth the proposition to be submitted and the day and time and place or places thereof and the polling districts therefor and the hours during which the polls at such election will be open. At least seven days before the date thereof, the clerk shall post not less than seven copies of such notice, one on each schoolhouse within the municipality and the others at such other public places in the municipality as he may select, and shall publish said notice in a newspaper published in the municipality if there be one or, if there be no such newspaper, in a newspaper published in the county and circulating in the municipality. No other or different notice of said election shall be required to be posted, published, delivered or otherwise given in any manner, except those required to be given by R.S.19:12-7. Such election shall be held and the result of the balloting on such question ascertained and determined in accordance with the provisions of Title 19, Elections, of the Revised Statutes, which are not inconsistent with this section and are applicable to the holding in such municipality of a general, special or municipal election, as the case may be, but any notice or demand therein required to be given to or made upon any person or body for the performance of an official duty with regard to such election shall be sufficient, if given or made at least 10 days before the date of such election, except as otherwise required by this section.

45. Section 1 of P.L.1983, c.69 (C.40A:4-45.3a1) is amended to read as follows:

C.40A:4-45.3a1 Provision of polling places; election worker compensation.

1. Notwithstanding the provisions of Title 19 of the Revised Statutes to the contrary, referenda conducted by any municipality pursuant to subsection i. of section 3 of P.L.1976, c.68 (C.40A:4-45.3), for the purpose of increasing the municipal budget by more than 5% over the previous year's final appropriations, may be conducted with respect to the provision of polling places and the compensation of election workers in the same manner as is provided for school elections under Title 19 of the Revised Statutes.

Repealer.

46. The following sections are hereby repealed:

N.J.S.18A:14-1 through 18A:14-104 inclusive;

P.L.1983, c.63, s.3 (C.18A:14-2.1);

P.L.1973, c.71 (C.18A:14-4a);

P.L.1991, c.429, ss.13-17 (C.18A:14-5.1 to 18A:14-5.5);

P.L.1981, c.99, s.1 (C.18A:14-6.1);

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P.L.1987, c.328, s.6 (C.18A:14-10.1);
P.L.1979, c.49 (C.18A:14-26.1);
P.L.1973, c.18, s.1-14 (C.18A:14-63.1 to 18A:14-63.14);
R.S.19:12-4.

47. This act shall take effect 90 days following the date of enactment.

Approved December 15, 1995.

CHAPTER 279

AN ACT revising certain provisions of the law of corporations, allowing the merger or consolidation of corporations with certain other business entities, amending and supplementing Title 14A of the New Jersey Statutes and amending the title and body of P.L.1973, c.367.

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

1. N.J.S.14A:1-2.1 is amended to read as follows:

Definitions.

14A:1-2.1. Definitions.

As used in this act, unless the context otherwise requires, the term:

(a) "Act" or "this act" means the "New Jersey Business Corporation Act" and includes all amendments and supplements thereto.

(b) "Attorney General" means the Attorney General of New Jersey.

(c) "Authorized shares" means the shares of all classes and series which the corporation is authorized to issue.

(d) "Board" means board of directors. "Entire board" means the total number of directors which the corporation would have if there were no vacancies.

(e) "Bonds" includes secured and unsecured bonds, debentures, notes and other written obligations for the payment of money.

(f) "Certificate of incorporation" includes:

(i) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by cer-

tificates of amendment, merger or consolidation or by other certificates or instruments filed or issued under any statute; and

(ii) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.

(g) "Corporation" or "domestic corporation" means a corporation for profit organized under this act, or existing on its effective date and theretofore organized under any other law of this State for a purpose or purposes for which a corporation may be organized under this act.

(h) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title.

(i) "Foreign corporation" means a corporation for profit organized under laws of a jurisdiction other than this State for a purpose or purposes for which a corporation may be organized under this act.

(j) "Resolution" means any action taken or authority granted by the shareholders, the board, or a committee of the board, regardless of whether evidenced by a formal resolution.

(k) "Secretary of State" means the Secretary of State of New Jersey.

(l) "Shareholder" means one who is a holder of record of shares in a corporation.

(m) "Shares" means the units into which the proprietary interests in a corporation are divided.

(n) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(o) "Subsidiary" means a domestic or foreign corporation whose outstanding shares are owned directly or indirectly by another domestic or foreign corporation in such number as to entitle the holder at the time to elect a majority of its directors without regard to voting power which may thereafter exist upon a default, failure or other contingency.

(p) "Treasury shares" means shares of a corporation which have been issued, and have been subsequently acquired by the corporation under circumstances which do not result in cancellation. Treasury shares are issued shares, but not outstanding shares.

(q) "Other business entity" means a partnership or limited liability company, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction.

(r) "Votes cast" means all votes cast in favor of and against a particular proposition, but shall not include abstentions.

2. N.J.S.14A:1-6 is amended to read as follows:

Execution, filing and recording of documents.

14A:1-6. Execution, filing and recording of documents.

(1) If a document relating to a domestic or foreign corporation is required or permitted to be filed in the office of the Secretary of State under this act:

(a) The document shall be in the English language, shall be typed or machine printed, except that the corporate name need not be in the English language if written in English letters or Arabic or Roman numerals, and except that this requirement shall not apply to a certificate of good standing under paragraph 14A:2-4(2)(b), section 14A:2-5, or subsection 14A:13-4 (2).

(b) The filing shall be accomplished by delivering the document to the office of the Secretary of State, together with the fees and any accompanying documents required by law. Thereupon, the Secretary of State shall endorse the document with the word "Filed" with his official title and shall file it in his office. Each document accepted for filing shall be deemed filed as of the latest date and time of receipt stamped upon it pursuant to subsection (7) of this section. If a document was erroneously rejected for filing by the Secretary of State or for any other reason the latest "received" date would not properly reflect the filing date, the Secretary of State shall, upon request, mark the document "Filed" as of the correct date.

(c) The transaction in connection with which the document has been filed shall be effective at the time of filing, unless a subsequent effective time is set forth in such document pursuant to any other provision of this act, in which case such transaction shall be effective at the time so specified, which shall in no event be later than 90 days after the date of filing.

(2) If a document relating to a domestic corporation or a foreign corporation is required or permitted to be filed under this act and is also required by this act to be executed on behalf of such corporation, the document shall be signed by the chairman of the board, or the president or a vice-president. The name of any person so signing such a document, and the capacity in which he signs, shall be stated beneath or opposite his signature. The document may, but need not, contain

(a) The corporate seal; or

(b) An attestation by the secretary or an assistant secretary of the corporation; or

(c) An acknowledgment or proof.

If the corporation is in the hands of a receiver, trustee, or other court appointed officer, the document shall be signed by such fiduciary or the majority of them, if there are more than one.

(3) (Deleted by amendment, P.L.1988, c.94.)

(4) The Secretary of State shall record all documents, excepting annual reports, which relate to or in any way affect corporations, and which are required or permitted by law to be filed in his office. The recording may be effected by typewritten copy, or by photographic, microphotographic or microfilming process, or in such other manner as may be provided by law. Such records shall be kept in a place separate and away from the place where the originals are filed.

(5) If any instrument filed with the Secretary of State under any provision of this act is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, such instrument may be corrected by filing with the Secretary of State a certificate of correction executed on behalf of the corporation. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the correction. The instrument so corrected shall be deemed to have been effective in its corrected form as of its original filing date except as to persons who relied upon the inaccurate portion of the certificate and who are adversely affected by the correction; the correction shall be effective as to such persons as of the effective date of filing of the certificate of correction.

(6) Whenever this act requires that any certificate, report or statement made, published or recorded by any corporation, domestic or foreign, state the residence or post office address of any incorporator, shareholder, director or officer, there may be furnished in the document either the home address or the business address of the person.

(7) All documents submitted or resubmitted to the Secretary of State shall be stamped immediately with the word "Received" together with the date and time of receipt.

3. N.J.S.14A:1-10 is amended to read as follows:

Filing documents by telecopy.

14A:1-10. Filing documents by telecopy.

(1) The Secretary of State may accept for filing by means of telecopy any document required or permitted to be filed in the office of the Secretary of State.

(2) The Secretary of State shall charge a fee for the filing of a document by telecopy, which fee shall be in addition to the usual fee charged for filing the document.

(3) "Telecopy" means any method or means adopted by the Secretary of State for the transmission or receipt of facsimile documents.

4. N.J.S.14A:5-6 is amended to read as follows:

Action by shareholders without a meeting.

14A:5-6. Action by shareholders without a meeting.

(1) Any action required or permitted to be taken at a meeting of shareholders by this act or the certificate of incorporation or bylaws of a corporation, may be taken without a meeting if all the shareholders entitled to vote thereon consent thereto in writing, except that in the case of any action to be taken pursuant to Chapter 10 of this act, such action may be taken without a meeting only if all shareholders consent thereto in writing or if all shareholders entitled to vote thereon consent thereto in writing and the corporation provides to all other shareholders the advance notification required by paragraph 14A:5-6(2)(b).

(2) Except as otherwise provided in the certificate of incorporation and subject to the provisions of this subsection, any action required or permitted to be taken at a meeting of shareholders by this act, the certificate of incorporation, or bylaws, other than the annual election of directors, may be taken without a meeting, without prior notice and without a vote, upon the written consent of shareholders who would have been entitled to cast the minimum number of votes which would be necessary to authorize such action at a meeting at which all shareholders entitled to vote thereon were present and voting.

(a) If any shareholder shall have the right to dissent from the proposed action, pursuant to Chapter 11 of this act, the board shall fix a date on which written consents are to be tabulated; in any other case, it may fix a date for tabulation. If no date is fixed, consents may be tabulated as they are received. No consent shall be counted which is received more than 60 days after the date of the board action authorizing the solicitation of consents or, in a case in which consents, or proxies for consents, are solicited from all shareholders who would have been entitled to vote at a meeting called to take such action, more than 60 days after the date of mailing of solicitation of consents, or proxies for consents.

(b) Except as provided in subsection 14A:5-6(2)(c), the corporation, upon receipt and tabulation of the requisite number of written consents, shall promptly notify all non-consenting shareholders, who would have been entitled to notice of a meeting to vote upon such action, of the action consented to, the proposed effective date of such action, and any conditions precedent to such action. Such notification shall be given at least 20 days in advance of the proposed effective date of such action in the case of any action taken pursuant to Chapter 10 of this act, and at least 10 days in advance in the case of any other action. Any shareholder who did not consent, personally, or by proxy, to any action which he has a right to dissent from as provided in Chapter 11 of this act shall in such notice also be informed that he has the right to dissent and to be paid the fair value of his shares, provided he files with the corporation a written notice of dissent as required by subsection 14A:11-2(1) within 20 days from the date of giving of the notice, or such greater period of time as may be granted by the corporation, and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in Chapter 11 of this act with which he must comply in order to assert and enforce such right.

(c) The corporation need not provide the notification required by paragraph 14A:5-6(2)(b) if it

(i) solicits written consents or proxies for consents from all shareholders who would have been entitled to vote at a meeting called to take such action, and at the same time gives notice of the proposed action to all other shareholders who would have been entitled to notice of a meeting called to vote upon such action;

(ii) advises all shareholders, if any, who are entitled to dissent from the proposed action, as provided in Chapter 11 of this act, of their right to do so and to be paid the fair value of their shares, provided they file with the corporation before the date fixed for tabulation of the written consents a written notice of dissent as required by subsection 14A:11-2(1), and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in Chapter 11 of this act with which they must comply in order to assert and enforce such right; and

(iii) fixes a date for tabulation of consents not less than 20 days, in the case of any proposed action to be taken pursuant to Chapter 10 of this act, or not less than 10 days in the case of any other proposed action, and not more than 60 days, after the date of mailing of solicitations of consents or proxies for consents.

(d) Any consent obtained pursuant to paragraph 14A:5-6(2)(c) may be revoked at any time prior to the day fixed for tabulation of consents. Any other consent may be revoked at any time prior to the day on which the proposed action could be taken upon compliance with paragraph 14A:5-6(2)(b). No revocation shall be effective unless in writing and until received by the corporation at the place fixed for receipt of consents or, if none, at the main business office or headquarters of the corporation.

(3) Whenever action is taken pursuant to subsection 14A:5-6(1) or 14A:5-6(2), the written consents of the shareholders consenting thereto or the written report of inspectors appointed to tabulate such consents shall be filed with the minutes of proceedings of shareholders.

(4) Any action taken pursuant to subsection 14A:5-6(1) or 14A:5-6(2) shall have the same effect for all purposes as if such action had been taken at a meeting of the shareholders.

(5) If any other provision of this act requires the filing of a certificate upon the taking of an action by shareholders, and such action is taken in the manner authorized by subsection 14A:5-6(1) or 14A:5-6(2), such certificate shall state that such action was taken without a meeting pursuant to the written consents of the shareholders and shall set forth the number of shares represented by such consents.

5. N.J.S.14A:5-7 is amended to read as follows:

Fixing record date.

14A:5-7. Fixing record date.

(1) The bylaws may provide for fixing, or in the absence of such a provision the board may fix, in advance, a date as the record date for determining the corporation's shareholders with regard to any corporate action or event and, in particular, for determining the shareholders entitled to

(a) notice of or to vote at any meeting of shareholders or any adjournment thereof;

(b) give a written consent to any action without a meeting; or

(c) receive payment of any dividend or allotment of any right. The record date may in no case be more than 60 days prior to the shareholders' meeting or other corporate action or event to which it relates. The record date for a shareholders' meeting may not be less than 10 days before the date of the meeting. The record date to determine shareholders entitled to give a written consent may not be more than 60 days before the date fixed for tabulation of the consents or, if

no date has been fixed for tabulation, more than 60 days before the last day on which consents received may be counted.

(2) If no record date is fixed

(a) the record date for a shareholders' meeting shall be the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day next preceding the day on which the meeting is held; and

(b) the record date for determining shareholders for any purpose other than that specified in paragraph 14A:5-7(2)(a) shall be at the close of business on the day on which the resolution of the board relating thereto is adopted; and

(c) the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by this act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this State, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

(3) When a determination of shareholders of record for a shareholders' meeting has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.

6. N.J.S.14A:5-29 is amended to read as follows:

Preemptive rights.

14A:5-29. Preemptive rights.

(1) The shareholders of corporations organized after January 1, 1969 shall not have preemptive rights unless the certificate of incorporation provides otherwise. The shareholders of corporations organized prior to January 1, 1969 shall have preemptive rights unless a bylaw duly adopted by the shareholders prior to that date or the certificate of incorporation provides otherwise. Any corporation may alter or abolish preemptive rights by amendment to its certificate of incorporation.

(2) Any corporation may elect to grant its shareholders preemptive rights. An election may be made by including in the certificate of incorporation a statement to the effect that the shareholders shall have preemptive rights.

(3) Unless otherwise provided in the certificate of incorporation, the effect of shareholders having preemptive rights shall be as follows:

(a) Upon the issuance for cash of shares, or options to purchase shares, of the same class as those held by a shareholder, the shareholder shall have a right to acquire a pro rata portion of such shares or options so issued according to the number of shares of such class held by him. Such preemptive right shall extend to shares, obligations or other securities, however described, which are convertible into shares of the same class as those held by the shareholder.

(b) Shares, obligations or other securities of the corporation which are subject to preemptive rights as herein provided shall not be deemed to be issued for cash within the meaning of this section if cash constitutes only a part of the consideration received by the corporation.

(c) A shareholder may waive his preemptive right; a waiver of a preemptive right, when evidenced by a writing, shall be binding upon the shareholder notwithstanding it is given without consideration.

(d) No shareholder shall have a preemptive right to acquire shares, obligations or other securities as herein provided, which

(i) are issued pursuant to a plan of merger or consolidation;

(ii) are issued pursuant to Chapter 8 of this act;

(iii) are issued to satisfy conversion or option rights, however evidenced, granted by the corporation;

(iv) are issued pursuant to a plan of reorganization approved by a court pursuant to a statute of this State or of the United States; or

(v) are part of the shares, obligations or other securities authorized in the original certificate of incorporation and are issued within six months from the effective date of such certificate.

(e) Upon the proposed issuance of shares, obligations or other securities subject to preemptive rights, the board shall cause notice to be given to each shareholder of record entitled to preemptive rights. The notice shall set forth (i) the amount of shares, obligations or other securities with respect to which the shareholder has a preemptive right and the method used to determine that amount;

(ii) the price and other terms and conditions upon which the shareholder may purchase such shares, obligations or other securities; and

(iii) the time within which and the method by which the shareholder must exercise the right.

The notice shall be given at least 30 days prior to the time within which the shareholder must exercise the right.

(f) Shares, obligations or other securities subject to preemptive rights, which are not acquired by shareholders in the exercise of their preemptive rights may, for a period not exceeding one year after the date limited by the directors for the exercise of such preemptive rights, be issued, sold, or optioned to such person or persons as the board may determine, at a price not less than that at which they were offered to such shareholders. Any such shares, obligations or other securities not so issued, sold or optioned during such one-year period, shall at the expiration of such period again be subject to preemptive rights of shareholders.

7. N.J.S.14A:5-30 is amended to read as follows:

Liability of subscribers and shareholders.

14A:5-30. Liability of subscribers and shareholders.

(1) A holder of or subscriber for shares of a corporation shall be under no obligation to the corporation or its creditors to pay for such shares other than the obligation to pay to the corporation the unpaid portion of the consideration for which such shares were issued or to be issued, which in no event shall be less than the amount of the consideration for which such shares could be lawfully issued.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts of the corporation, except that a shareholder may become personally liable by the reason of his own acts or conduct.

(3) A person holding stock in a fiduciary or representative capacity shall not be personally liable to the corporation as the holder of or subscriber for shares of a corporation but the estate and funds in his hands shall be so liable.

(4) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be liable to the corporation or its creditors for any unpaid portion of such consideration, but the original holder or subscriber and any assignee or transferee prior to an assignment or transfer to a person taking in good faith and without such knowledge or notice shall remain liable therefor.

(5) No pledgee or other holder of shares as collateral security shall be liable as a shareholder.

8. N.J.S.14A:7-15.1 is amended to read as follows:

Share dividends, share divisions and combinations.

14A:7-15.1. Share dividends, share divisions and combinations.

(1) A corporation may effect a share dividend or a division or combination of its shares in the manner hereinafter set forth. As used in this section, the terms "division" and "combination" mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

(2) Except as otherwise provided in the certificate of incorporation, a share dividend, a division or combination may be effected by action of the board alone; except that any division which adversely affects the shares of another class shall be made by amendment. The board in effecting a share dividend, combination or division shall have authority to amend the certificate of incorporation to increase or decrease the par value of shares, increase or decrease the number of authorized shares and to make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by such combination or division. Notwithstanding the foregoing sentence, the board shall not have the authority to amend the certificate of incorporation, and shareholder approval for the amendment shall be required in accordance with subsection 14A:9-2(4) and section 14A:9-3, if as a result of the amendment:

(a) The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

(b) The percentage of authorized shares that remains unissued after the share dividend, division or combination will exceed the percentage of authorized shares that was unissued before the share dividend, division or combination.

(3) If a share dividend, division or combination is effected by board action without shareholder approval and includes an amendment of the certificate of incorporation, there shall be executed on behalf of the corporation and filed in the office of the Secretary of State a certificate of amendment setting forth

(a) The name of the corporation;

(b) The date of adoption by the board of the resolution approving the dividend, division or combination;

(c) That the amendment to the certificate of incorporation will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the share dividend, division or combination exceeding the percentage of authorized shares that was unissued before the share dividend, division or combination;

(d) The class or series and number of shares thereof subject to the dividend, division or combination and the number of shares to be issued on the dividend or into which they are to be divided or combined;

(e) The amendment of the certificate of incorporation made in connection with the dividend, division or combination; and

(f) If the dividend, division or combination is to become effective at a time subsequent to the time of filing, the date, which may not exceed 90 days from the date of filing, when the same is to become effective.

(4) If a share dividend, division or combination is effected by action of the board and the shareholders, there shall be executed on behalf of the corporation and filed in the office of the Secretary of State a certificate of amendment as provided in subsection 14A:9-4(3), which certificate shall set forth, in addition to all information required by said subsection, the information required by paragraph 14A:7-15.1(3)(d).

(5) Upon a combination becoming effective, the authorized shares of the class or series subject thereto shall be reduced by the same percentage by which the issued shares of such class or series were reduced as a result of the combination unless the certificate of incorporation otherwise provides or the combination was approved by the shareholders in accordance with subsection 14A:9-2(4) and section 14A:9-3.

(6) (Deleted by amendment, P.L.1988, c.94.)

9. N.J.S.14A:7-16 is amended to read as follows:

Acquisitions of a corporation's own shares.

14A:7-16. Acquisitions of a corporation's own shares.

(1) Subject to the provisions of section 14A:7-14.1, a corporation may acquire its own shares.

(2) (Deleted by amendment, P.L.1988, c.94.)

(3) (Deleted by amendment, P.L.1988, c.94.)

(4) (Deleted by amendment, P.L.1988, c.94.)

(5) No acquisition of its own shares shall be made by a corporation

(a) Contrary to any restrictions contained in the certificate of incorporation;

(b) (Deleted by amendment, P.L.1988, c.94.)

(c) Unless after such acquisition there remain outstanding one or more classes or series of shares possessing, among them collectively, voting rights and unlimited residual rights as to dividends and distribution of assets on liquidation; or

(d) In the case of redeemable shares and within the period of their redeemability, at a price greater than the applicable redemption price plus, in the case of shares entitled to cumulative dividends, the dividends which would have accrued to the next dividend date following the date of acquisition.

(6) (Deleted by amendment, P.L.1988, c.94.)

(7) Unless the certificate of incorporation otherwise provides, a corporation may acquire its shares whether or not the net assets remaining after the transaction are less than the aggregate amount of the preferences of outstanding shares in the assets of the corporation upon liquidation.

(8) In connection with an agreement to acquire its shares, a corporation may grant a security interest in the acquired shares to secure an obligation to pay for the acquisition. The shares shall not be deemed to be reacquired by the corporation and cancelled on its books until the obligation of the corporation is fully paid or discharged.

(9) A corporation may acquire or agree to acquire its shares, notwithstanding that the acquisition would constitute a distribution prohibited under section 14A:7-14.1, if all or part of the purchase price is deferred until such time as the payment would not constitute a prohibited distribution.

10. N.J.S.14A:7-18 is amended to read as follows:

Cancellation of reacquired shares.

14A:7-18. Cancellation of reacquired shares.

(1) When shares of a corporation are reacquired by purchase, by redemption or by their conversion into other shares of the corporation, the reacquisition shall effect their cancellation, unless the board determines that the shares shall be treasury shares or the bylaws so provide. In addition, any shares which were treasury shares on or before December 1, 1988, shall continue to be treasury shares unless cancelled by the board. The board may cancel treasury shares at any time. Upon their cancellation, shares shall be restored to the status of authorized but unissued shares, unless the certificate of incorporation, or the plan of merger or consolidation in the case of shares acquired by the corporation pursuant to Chapter 11 of this act, provides that such shares shall not be reissued, in which case a certificate of amendment to the certificate of incorporation shall be filed, pursuant to a resolution of the board, reducing the authorized number of shares by the number of shares so cancelled.

(2) The certificate of amendment reducing the authorized shares shall be executed on behalf of the corporation and filed in the office of the Secretary of State not later than 30 days after the cancellation of the reacquired shares not to be reissued. The statement shall set forth:

(a) The name of the corporation;

(b) The number of shares cancelled, itemized by classes and series, and the date of adoption of the resolution of the board cancelling such shares;

(c) The aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation;

(d) A statement that the certificate of incorporation or plan of merger provides that the shares cancelled shall not be reissued; and

(e) That the certificate of incorporation is amended by decreasing the aggregate number of shares which the corporation is authorized to issue by the number of shares cancelled.

(f) (Deleted by amendment, P.L.1988, c.94.)

(3) (Deleted by amendment, P.L.1988, c.94.)

(4) A certificate of amendment reducing the authorized shares because of the conversion of convertible shares shall be filed only if the certificate of incorporation provides that such shares shall not be reissued. The certificate of amendment shall set forth the information required by subsection 14A:7-18(2) and in the case of cancellation of converted shares, the certificate of amendment shall be filed not later than 90 days after the close of the fiscal year in which the shares were reacquired.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of authorized shares in any other manner permitted by this act.

11. N.J.S.14A:9-2 is amended to read as follows:

Procedure to amend certificate of incorporation.

14A:9-2. Procedure to amend certificate of incorporation.

(1) Before the organization meeting of the board, the incorporators may amend the certificate of incorporation by complying with subsection 14A:9-4(1).

(2) Amendment of the certificate of incorporation by action of the board is provided for in subsection 14A:4-3(1), subsection 14A:5-21(4), subsection 14A:7-2(4), subsection 14A:7-9(4), subsection 14A:7-15.1(3), and subsections 14A:7-18(1) and 14A:7-18(4). Amendment of the certificate of incorporation by action of

the registered agent to change the registered office is provided for in subsection 14A:4-3(3).

(3) An amendment of the certificate of incorporation pursuant to a plan of merger may be made in the manner provided in Chapter 10 of this act.

(4) All other amendments of the certificate of incorporation shall be made in the following manner:

(a) The board shall approve the proposed amendment and direct that it be submitted to a vote at a meeting of the shareholders.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes cast by the holders of shares entitled to vote thereon and, in addition, if any class or series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to January 1, 1969, the proposed amendment shall be adopted upon receiving the affirmative vote of two-thirds of the votes so cast. The voting requirements of this section shall be subject to such greater requirements as are provided in this act for specific amendments, or as may be provided in the certificate of incorporation.

(d) Subject to the provisions of section 14A:5-12, a corporation organized prior to January 1, 1969 may adopt the majority voting requirements prescribed in paragraph 14A:9-2(4)(c) by amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(e) Any number of amendments may be acted upon at one meeting.

(f) Upon adoption, a certificate of amendment shall be filed in the office of the Secretary of State as provided in section 14A:9-4.

12. N.J.S.14A:10-1 is amended to read as follows:

Procedure for merger.

14A:10-1. Procedure for merger.

(1) Any two or more domestic corporations, or any one or more domestic corporations and any one or more other business entities, may

merge into one of such corporations or other business entities pursuant to a plan of merger approved in the manner provided in this act.

(2) The board of each corporation shall approve a plan of merger setting forth

(a) The names of the corporations or other business entities proposing to merge, and the name of the corporation or other business entity into which they propose to merge, which is hereinafter designated as the surviving corporation or surviving other business entity;

(b) The terms and conditions of the proposed merger, including a statement of any amendments in the certificate of incorporation of the surviving corporation to be effected by such merger which amendments may be set forth in and effected by a restated certificate of incorporation which may be filed as an additional document together with the certificate of merger;

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or of the surviving other business entity, or of any other corporation or other business entity, or, in whole or in part, into cash or other property; and

(d) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

13. N.J.S.14A:10-2 is amended to read as follows:

Procedure for consolidation.

14A:10-2. Procedure for consolidation.

(1) Any two or more domestic corporations, or any one or more corporations and any one or more other business entities, may consolidate into a new corporation or other business entity pursuant to a plan of consolidation approved in the manner provided in this act.

(2) The board of each corporation shall approve a plan of consolidation setting forth

(a) the names of the corporations proposing to consolidate, and the name of the new corporation or other business entity into which they propose to consolidate, which is hereinafter designated as the new corporation or new business entity;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or new business entity, or of any other corporation or business entity, in whole or in part, into cash or other property;

(d) with respect to the new corporation, all of the statements required to be set forth in the certificate of incorporation for corporations organized under this act, except that it shall not be necessary to set forth the name and address of each incorporator; and

(e) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

14. N.J.S.14A:10-4.1 is amended to read as follows:

Certificate of merger or consolidation.

14A:10-4.1. Certificate of merger or consolidation.

(1) After approval of the plan of merger or consolidation, a certificate of merger or a certificate of consolidation shall be executed on behalf of each corporation. The certificate shall set forth

(a) The name of the surviving or new corporation or new other business entity and the names of the merging or consolidating corporations or other business entities;

(b) The plan of merger or the plan of consolidation;

(c) The date or dates of approval by the shareholders of each corporation of the plan of merger or the plan of consolidation;

(d) As to each corporation whose shareholders are entitled to vote, the number of shares entitled to vote thereon, and, if the shares of any class or series are entitled to vote thereon as a class, the designation and number of shares entitled to vote thereon of each class or series;

(e) As to each corporation whose shareholders are entitled to vote, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class or series voted for and against the plan, respectively; and

(f) In the case of a merger governed by subsection 14A:10-3 (4), that the plan of merger was approved by the board of directors of the surviving corporation and that no vote of the shareholders of the surviving corporation was required because of the applicability of that subsection; and

(g) If, pursuant to subsection 14A:10-4.1(2), the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective.

(2) The executed original and a copy of the certificate shall be filed in the office of the Secretary of State and the merger or consolidation shall become effective upon the date of the filing or at a later time, not to exceed 90 days after the date of filing, as may be set forth in the

certificate. The Secretary of State shall, upon filing, forward the copy of the certificate to the Director of the Division of Taxation.

15. N.J.S.14A:10-5.1 is amended to read as follows:

Merger of subsidiary corporation.

14A:10-5.1. Merger of subsidiary corporation.

(1) A domestic corporation owning at least 90% of the outstanding shares of each class and series of another domestic corporation or corporations, may merge the other corporation or corporations into itself, or may merge itself, or itself and any subsidiary corporation or corporations, into any subsidiary corporation, without approval of the shareholders of any of the corporations, except as provided in subsections 14A:10-5.1(5) and 14A:10-5.1(6). The board of the parent corporation shall approve a plan of merger setting forth those matters required to be set forth in plans of merger under section 14A:10-1. Approval by the board of any subsidiary corporation shall not be required.

(2) If the parent corporation owns less than 100% of the outstanding shares of each subsidiary corporation, it shall mail to each minority shareholder of record of each subsidiary corporation, unless waived in writing, a copy or a summary of the plan of merger. The parent corporation shall also mail to each shareholder who, under Chapter 11 of this act, is entitled to dissent, a statement informing the shareholder that he has the right to dissent and to be paid the fair value of his shares, and outlining briefly, with particular reference to the time periods within which actions shall be taken, the procedures set forth in Chapter 11 of this act with which he shall comply in order to assert and enforce that right.

(3) A certificate of merger shall be executed on behalf of the parent corporation. The certificate shall set forth:

(a) The name of the surviving corporation and the names of the merged corporations;

(b) The plan of merger;

(c) The date of approval by the board of the parent corporation of the plan of merger;

(d) The number of outstanding shares of each class and series of each subsidiary corporation which is a party to the merger and the number of shares of each class and series owned by the parent corporation;

(e) If the parent corporation owns less than 100% of the outstanding shares of each subsidiary corporation, the date of the mailing of a copy or a summary of the plan of merger to minority

shareholders of each subsidiary corporation; or if all the shareholders have waived the mailing in writing, a statement that the waiver has been obtained;

(f) If approval of the shareholders of the parent corporation is required by subsection 14A:10-5.1(6), the information as to the corporation required by paragraphs 14A:10-4.1(1)(d) and (e); and

(g) If, pursuant to subsection 14A:10-5.1(4), the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective.

(4) The executed original and a copy of the certificate shall be filed in the office of the Secretary of State and the merger shall become effective upon the date of the filing or at a later time, not to exceed 90 days from the date of filing, as may be set forth in the certificate. The Secretary of State shall, upon filing, forward the copy of the certificate to the Director of the Division of Taxation.

(5) Approval of the shareholders of any subsidiary corporation shall be obtained pursuant to its certificate of incorporation, if the certificate requires approval of a merger by the affirmative vote of the holders of more than the percentage of the shares of any class or series of the corporation then owned by the parent corporation.

(6) Approval of the shareholders of the parent corporation shall be obtained:

(a) Whenever its certificate of incorporation requires shareholder approval of a merger; or

(b) Pursuant to section 14A:10-3 where

(i) the plan of merger contains a provision which would change any part of the certificate of incorporation of the parent corporation into which a subsidiary corporation is being merged, unless the change is one that can be made by the board without shareholder approval as referred to in subsection 14A:9-2(2); or

(ii) a subsidiary corporation is to be the surviving corporation.

(7) The grant of the power to merge under this section shall not preclude the effectuation of any merger as elsewhere provided in this Chapter.

16. N.J.S.14A:10-11 is amended to read as follows:

Sale or other disposition of assets other than in regular course of business.

14A:10-11. Sale or other disposition of assets other than in regular course of business.

(1) A sale, lease, exchange, or other disposition of all, or substantially all, the assets of a corporation, if not in the usual and

regular course of its business as conducted by such corporation, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, bonds, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) The board shall recommend such sale, lease, exchange, or other disposition and direct that it be submitted to a vote at a meeting of shareholders.

(b) Written notice shall be given not less than 20 nor more than 60 days before such meeting to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in this act for the giving of notice of meetings of shareholders. Such notice shall include, or shall be accompanied by

(i) a statement summarizing the principal terms of the proposed transaction; and (ii) a statement informing shareholders who, under Chapter 11 of this act, are entitled to dissent, that they have the right to dissent and to be paid the fair value of their shares and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in Chapter 11 of this act with which they must comply in order to assert and enforce such right.

(c) At such meeting the shareholders may approve such sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such sale, lease, exchange or other disposition shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares entitled to vote thereon, and, in addition, if any class or series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to January 1, 1969, the sale, lease, exchange, or other disposition shall be approved upon receiving the affirmative vote of two-thirds of the votes so cast.

(d) Subject to the provisions of section 14A:5-12, a corporation organized prior to January 1, 1969, may adopt the majority voting requirements prescribed in paragraph 14A:10-11(1)(c) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(2) Notwithstanding such approval or authorization by the shareholders, the board may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action by the shareholders.

(3) The sale, lease, exchange, or other disposition of all, or substantially all, the assets of one or more subsidiaries of a corporation, if not in the usual and regular course of business as conducted by such subsidiary or subsidiaries, shall be treated as a disposition within the meaning of subsection 14A:10-11(1) if the subsidiary or subsidiaries constitute all, or substantially all, the assets of the corporation.

(4) Notwithstanding the provisions of subsection (1) of this section, a parent corporation may, upon such terms and conditions and for such consideration as may be determined by its board, transfer any or all of its assets to any corporation, all of the outstanding shares of which are owned, directly or indirectly, by the parent corporation, and, unless the certificate of incorporation of the parent corporation otherwise requires, no approval or authorization by the shareholders of the parent corporation shall be required.

17. N.J.S.14A:11-11 is amended to read as follows:

Disposition of shares acquired by corporation.

14A:11-11. Disposition of shares acquired by corporation.

(1) The shares of a dissenting shareholder in a transaction described in subsection 14A:11-1(1) shall become reacquired by the corporation which issued them or by the surviving corporation, as the case may be, upon the payment of the fair value of shares.

(2) (Deleted by amendment, P.L.1995, c.279.)

(3) In an acquisition of shares pursuant to section 14A:10-9 or section 14A:10-13, the shares of a dissenting shareholder shall become the property of the acquiring corporation upon the payment by the acquiring corporation of the fair value of such shares. Such payment may be made, with the consent of the acquiring corporation, by the corporation which issued the shares, in which case the shares so paid for shall become reacquired by the corporation which issued them and shall be cancelled.

18. N.J.S.14A:12-3 is amended to read as follows:

Dissolution without a meeting of shareholders.

14A:12-3. Dissolution without a meeting of shareholders.

A corporation may be dissolved by the consent of all its shareholders entitled to vote thereon. Notice of dissolution pursuant to

this section shall be provided to all shareholders not entitled to vote thereon, not less than 10 nor more than 60 days before the filing of the certificate of dissolution, in the manner provided in this act for the giving of notice of meetings of shareholders. To effect such dissolution, all shareholders entitled to vote thereon shall sign and file in the office of the Secretary of State a certificate of dissolution which shall state

(a) the name of the corporation;

(b) the name of the registered agent of the corporation;

(c) the location of the registered office of the corporation;

(d) the names of its directors and officers;

(e) that the corporation is dissolved; and

(f) that the certificate has been signed in person or by proxy by all the shareholders of the corporation entitled to vote thereon.

19. N.J.S.14A:12-4 is amended to read as follows:

Dissolution pursuant to action of board and shareholders.

14A:12-4. Dissolution pursuant to action of board and shareholders.

(1) A corporation may be dissolved by action of its board and its shareholders as provided in this section.

(2) The board shall recommend that the corporation be dissolved, and direct that the question of dissolution be submitted to a vote at a meeting of shareholders.

(3) Written notice of the meeting shall be given not less than 10 nor more than 60 days before the meeting to each shareholder of record whether or not entitled to vote at such meeting in the manner provided in this act for the giving of notice of meetings of shareholders.

(4) At such meeting, a vote of the shareholders shall be taken on the proposed dissolution. Such dissolution shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares of the corporation entitled to vote thereon, and, in addition, if any class or series is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to the effective date of this act, the proposed dissolution shall be approved upon receiving the affirmative vote of two-thirds of the votes so cast. The voting requirements of this section shall be subject to such greater requirements as may be provided in the certificate of incorporation.

(5) Subject to the provisions of section 14A:5-12, a corporation organized prior to January 1, 1969 may adopt the majority voting

requirements prescribed in subsection 14A:12-4(4) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(6) If dissolution is approved as provided in this section, a certificate of dissolution shall be executed on behalf of the corporation and shall be filed in the office of the Secretary of State. The certificate shall set forth

(a) the name of the corporation;

(b) the name of the registered agent of the corporation;

(c) the location of the registered office of the corporation;

(d) the names of the corporation's directors and officers;

(e) the text of the board resolution authorizing the dissolution;

(f) the date and place of the meeting of shareholders called to vote upon the dissolution;

(g) the number of outstanding shares of the corporation entitled to vote on the dissolution, and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class and series; and

(h) the number of shares represented at the meeting, the number of shares voted for and voted against the dissolution, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class and series voted for and voted against the dissolution.

20. N.J.S.14A:12-8 is amended to read as follows:

Effective time of dissolution.

14A:12-8. Effective time of dissolution.

A corporation is dissolved

(a) when the period of duration stated in the corporation's certificate of incorporation expires and the corporation files a certificate of dissolution in the office of the Secretary of State pursuant to section 14A:12-5.1; or

(b) upon the proclamation of the Secretary of State issued pursuant to section 54:11-2 of the Revised Statutes; or

(c) when a certificate of dissolution is filed in the office of the Secretary of State pursuant to section 14A:12-2, 14A:12-3, 14A:12-4 or 14A:12-5, except when a later time not to exceed 90 days after the date of filing is specified in the certificate of dissolution; or

(d) when a judgment of forfeiture of corporate franchises or of dissolution is entered by a court of competent jurisdiction.

21. N.J.S.14A:11-1 is amended to read as follows:

Right of shareholders to dissent.

14A:11-1. Right of shareholders to dissent.

(1) Any shareholder of a domestic corporation shall have the right to dissent from any of the following corporate actions

(a) Any plan of merger or consolidation to which the corporation is a party, provided that, unless the certificate of incorporation otherwise provides

(i) a shareholder shall not have the right to dissent from any plan of merger or consolidation with respect to shares

(A) of a class or series which is listed on a national securities exchange or is held of record by not less than 1,000 holders on the record date fixed to determine the shareholders entitled to vote upon the plan of merger or consolidation; or

(B) for which, pursuant to the plan of merger or consolidation, he will receive (x) cash, (y) shares, obligations or other securities which, upon consummation of the merger or consolidation, will either be listed on a national securities exchange or held of record by not less than 1,000 holders, or (z) cash and such securities;

(ii) a shareholder of a surviving corporation shall not have the right to dissent from a plan of merger, if the merger did not require for its approval the vote of such shareholders as provided in section 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or 14A:10-7(4); or

(b) Any sale, lease, exchange or other disposition of all or substantially all of the assets of a corporation not in the usual or regular course of business as conducted by such corporation, other than a transfer pursuant to subsection (4) of N.J.S.14A:10-11, provided that, unless the certificate of incorporation otherwise provides, the shareholder shall not have the right to dissent

(i) with respect to shares of a class or series which, at the record date fixed to determine the shareholders entitled to vote upon such transaction, is listed on a national securities exchange or is held of record by not less than 1,000 holders; or

(ii) from a transaction pursuant to a plan of dissolution of the corporation which provides for distribution of substantially all of its net assets to shareholders in accordance with their respective interests within one year after the date of such transaction, where such transaction is wholly for

(A) cash; or

(B) shares, obligations or other securities which, upon consummation of the plan of dissolution will either be listed on a national securities exchange or held of record by not less than 1,000 holders; or

(C) cash and such securities; or

(iii) from a sale pursuant to an order of a court having jurisdiction.

(2) Any shareholder of a domestic corporation shall have the right to dissent with respect to any shares owned by him which are to be acquired pursuant to section 14A:10-9.

(3) A shareholder may not dissent as to less than all of the shares owned beneficially by him and with respect to which a right of dissent exists. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner with respect to which the right of dissent exists.

(4) A corporation may provide in its certificate of incorporation that holders of all its shares, or of a particular class or series thereof, shall have the right to dissent from specified corporate actions in addition to those enumerated in subsection 14A:11-1(1), in which case the exercise of such right of dissent shall be governed by the provisions of this Chapter.

22. Section 1 of P.L.1973, c.367 (C.54:50-12) is amended to read as follows:

C.54:50-12 Definitions.

1. As used in P.L.1973, c.367 (C.54:50-12 et seq.):

a. "taxes" means all taxes, fees, penalties, and interest owing under any State tax law;

b. "foreign corporation" means any corporation other than a domestic corporation which is subject to taxation under any State tax law;

c. "business entity" means a corporation, partnership or limited liability company, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction, which is subject to taxation under any State tax law.

23. Section 2 of P.L.1973, c.367 (C.54:50-13) is amended to read as follows:

C.54:50-13 Merger, consolidations; dissolutions; conditions.

2. Until all taxes owing by it have been paid, or provided for as set forth in section 4 of P.L.1973, c.367 (C.54:50-15):

a. no domestic or foreign corporation shall merge or consolidate into a foreign corporation not authorized to transact business in this State; and

b. no domestic corporation shall dissolve and no domestic or foreign corporation shall distribute any of its assets in dissolution or liquidation to any shareholder unless

(1) one or more domestic corporations or foreign corporations authorized to transact business in this State are owners in the aggregate of 50% or more of all classes of such corporation's capital stock and, prior to such dissolution or distribution, all such holders of the corporation's capital stock jointly and severally undertake in writing to pay all such taxes on or before the date such taxes are payable; or

(2) such corporate action is pursuant to a plan of reorganization under which a domestic corporation or a foreign corporation authorized to transact business in this State has purchased, or is about to purchase, all, or substantially all, of the assets of such corporation in exchange for shares of its capital stock and has undertaken in writing to pay all such taxes on or before the date such taxes are payable; and

c. no business entity shall merge or consolidate into any other business entity other than a domestic corporation or a foreign corporation authorized to transact business in this State.

24. Section 3 of P.L.1973, c.367 (C.54:50-14) is amended to read as follows:

C.54:50-14 Certificates, various; Secretary of State's duties.

3. The Secretary of State shall not:

a. accept for filing a certificate of dissolution of a domestic corporation;

b. issue a certificate of withdrawal of a foreign corporation, unless such withdrawal is effected by its merger or consolidation into a domestic corporation or a foreign corporation authorized to transact business in this State;

c. accept for filing a certificate of merger or consolidation of a domestic corporation into a foreign corporation not authorized to transact business in this State; or

d. accept for filing a certificate of merger or consolidation of any business entity into any other business entity other than a domestic corporation or a foreign corporation authorized to transact business in this State;

unless the business entity files with the Secretary of State a certificate issued by the Director of the Division of Taxation dated not earlier than

45 days prior to the effective date of the business entity action evidencing that the business entity's taxes have been paid or provided for.

25. Section 4 of P.L.1973, c.367 (C.54:50-15) is amended to read as follows:

C.54:50-15 Issuance of tax certificate.

4. The Director of the Division of Taxation shall, upon application, issue a certificate evidencing that a business entity's taxes have been paid or provided for if:

a. In his judgment the amount which has been deposited or paid on account by the business entity is adequate to cover estimated taxes up to the date of the relevant business entity action; or

b. In a case in which the action taken or proposed to be taken is one of the exceptions specified in paragraph (1) or (2) of subsection b. of section 2 of P.L.1973, c.367 (C.54:50-13), the application for such certificate is accompanied by

(1) An opinion signed by an attorney-at-law of the State of New Jersey, who states that he is familiar with the facts of the transaction and that the requirements for such exception have been met and

(2) The written undertaking of the corporation or corporations assuming the tax liability; or

c. The application for such certificate is accompanied by

(1) A written undertaking from another business entity authorized to transact business in this State, to pay all taxes of the applicant business entity on or before the date such taxes are payable and

(2) A certification that the business entity making such undertaking has a net worth or capital, as the case may be, not less than 10 times the amount of all taxes paid by the applicant business entity during the last complete year in which it filed tax returns with the State of New Jersey.

The Director of the Division of Taxation shall be entitled to receive as a fee for the issuance of such certificate the sum of $25.00.

26. Section 5 of P.L.1973, c.367 (C.54:50-16) is amended to read as follows:

C.54:50-16 Required evidence.

5. The Director of the Division of Taxation may require, as a condition of issuing a certificate evidencing that a business entity's taxes have been paid or provided for, evidence by affidavit or otherwise that any foreign business entity not qualified to transact business in this

State, which is a party to the transaction causing the business entity to seek such a certificate, has paid all taxes, if any, owing by it.

27. Section 6 of P.L.1973, c.367 (C.54:50-17) is amended to read as follows:

C.54:50-17 Undertaking, certification executed under oath.

6. Any written undertaking or certificate to be filed by a business entity with the Director of the Division of Taxation as provided in P.L.1973, c.367 (C.54:50-12 et seq.) shall be executed under oath on its behalf by its president, vice president, treasurer, partner, member or manager.

28. Section 7 of P.L.1973, c.367 (C.54:50-18) is amended to read as follows:

C.54:50-18 Personal liability for violations or false certification.

7. Any officer, director, partner, member or manager of a business entity who is instrumental in a business entity violating section 2 of P.L.1973, c.367 (C.54:50-13), or in a business entity filing any certification under paragraph (2) of subsection c. of section 4 of P.L.1973, c.367 (C.54:50-15) which is materially false, shall be personally liable for payment of the business entity's taxes, if such taxes are not paid by the taxpayer business entity, or by the business entity which has undertaken to pay them, when due and payable. The amount of such personal liability shall be recoverable by the State in any court of competent jurisdiction and the Director of the Division of Taxation shall have such additional remedies for the enforcement of such personal liability as may be available under any law of this State.

29. The title of P.L.1973, c.367 is amended to read as follows:

Title amended.

An Act concerning tax procedure in connection with the dissolution, merger or consolidation of corporations and certain other business entities in certain cases, supplementing the State Tax Uniform Procedure Law, chapter 50 of Title 54 of the Revised Statutes and repealing R.S.54:50-11 and section 12 of the "Corporation Business Tax Act (1945)," approved April 13, 1945 (C.54:10A-12).

C.14A:10-14 Merger or consolidation of domestic corporation with other entities, manner.

30. (1) A domestic corporation may merge or consolidate with one or more other business entities in the following manner:

(a) Each domestic corporation shall comply with the provisions of chapter 10 of Title 14A of the New Jersey Statutes with respect to the merger or consolidation of domestic corporations and each other business entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

(b) The certificate of merger or consolidation required by section 14A:10-4.1 shall be executed on behalf of each domestic corporation and each other business entity and, in addition to the information required by subsection 14A:10-4.1(1), shall set forth that the applicable provisions of the laws of the jurisdiction under which each other business entity was organized have been, or upon compliance with filing and recording requirements will have been, complied with.

(c) If the surviving business entity or new business entity meets the definition of "other business entity" pursuant to subsection (q) of N.J.S.14A:1-2.1 is organized under the laws of another state or foreign jurisdiction and is to transact business in this State, it shall comply with the provisions of the laws of this State with respect to foreign partnerships or foreign limited liability companies, as appropriate, and, whether or not it is to transact business in this State, the certificate of merger or consolidation required by section 14A:10-4.1 shall, in addition to other required information, set forth

(i) an agreement by such foreign business entity that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation or any other business entity, previously amenable to suit in this State, which is a party to such merger or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation; and

(ii) an irrevocable appointment by such foreign business entity of the Secretary of State of this State as its agent to accept service of process in any such proceeding, and the post office address, within or without this State, to which the Secretary of State shall mail a copy of the process in such proceeding;

(iii) an agreement by such foreign business entity that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of chapter 11 of Title 14A of the New Jersey Statutes with respect to the rights of dissenting shareholders.

(2) The provisions of subsection 14A:10-3(4) shall apply to a merger in which the surviving corporation is a domestic corporation.

(3) If the surviving or new corporation is a domestic corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations. If the surviving or new corporation is any other business entity, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as provided otherwise in the laws under which such other business entity is organized.

31. This act shall take effect immediately, except that sections 12, 13, 14, and 30 shall remain inoperative until the 90th day following the date of enactment.

Approved December 15, 1995.

CHAPTER 280

AN ACT concerning juvenile justice and corrections 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 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.

2. Section 3 of P.L.1982, c.77 (C.2A:4A-22) is amended to read as follows:

C.2A:4A-22 General definitions.

3. General definitions. As used in this act:

a. "Juvenile" means an individual who is under the age of 18 years.

b. "Adult" means an individual 18 years of age or older.

c. "Detention" means the temporary care of juveniles in physically restricting facilities pending court disposition.

d. "Shelter care" means the temporary care of juveniles in facilities without physical restriction pending court disposition.

e. "Commit" means to transfer legal custody to an institution.

f. "Guardian" means a person, other than a parent, to whom legal custody of the child has been given by court order or who is acting in the place of the parent or is responsible for the care and welfare of the juvenile.

g. "Juvenile-family crisis" means behavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in (1) a serious threat to the well-being and physical safety of a juvenile, or (2) a serious conflict between a parent or guardian and a juvenile regarding rules of conduct which has been manifested by repeated disregard for lawful parental authority by a juvenile or misuse of lawful parental authority by a parent or guardian, or (3) unauthorized absence by a juvenile for more than 24 hours from his home, or (4) a pattern of repeated unauthorized absences from school by a juvenile subject to the compulsory education provision of Title 18A of the New Jersey Statutes.

h. "Repetitive disorderly persons offense" means the second or more disorderly persons offense committed by a juvenile on at least two separate occasions and at different times.

i. "Court" means the Superior Court, Chancery Division, Family Part unless a different meaning is plainly required.

j. "Commission" means the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

3. Section 6 of P.L.1982, c.77 (C.2A:4A-25) is amended to read as follows:

C.2A:4A-25 Transfer from other courts.

6. Transfer from other courts. Except as provided in section 4 of P.L.1982, c.77 (C.2A:4A-23), and unless jurisdiction has been waived under section 7 of P.L.1982, c.77 (C.2A:4A-26), if during the pendency in any other court of a case charging a person with a crime, offense or violation, it is ascertained that such person was a juvenile at the time of the crime, offense or violation charged, such court shall immediately transfer such case to the Superior Court, Chancery Division, Family Part. The Family Part shall thereupon proceed in the same manner as if the case had been instituted under this chapter in the first instance.

4. Section 9 of P.L.1982, c.77 (C.2A:4A-28) is amended to read as follows:

C.2A:4A-28 Effect of referral to other court.

9. Effect of referral to other court. Whenever a case is referred to another court as provided by section 7 of P.L.1982, c.77 (C.2A:4A-26) or section 8 of P.L.1982, c.77 (C.2A:4A-27), that case shall thereafter proceed in the same manner as if the case had been instituted in that court in the first instance.

5. Section 10 of P.L.1982, c.77 (C.2A:4A-29) is amended to read as follows:

C.2A:4A-29 Use of juvenile's testimony at referral hearing.

10. Use of juvenile's testimony at referral hearing. No testimony of a juvenile at a hearing pursuant to section 7 of P.L.1982, c.77 (C.2A:4A-26) or section 8 of P.L.1982, c.77 (C.2A:4A-27) shall be admissible for any purpose in any hearing to determine delinquency or guilt of any offense.

6. Section 13 of P.L.1982, c.77 (C.2A:4A-32) is amended to read as follows:

C.2A:4A-32 Short-term custody.

13. Short-term custody. a. Under no circumstances shall any juvenile taken into short-term custody under section 12 of P.L.1982, c.77 (C.2A:4A-31) be held more than six hours. A juvenile taken into short-term custody shall not be retained in a detention facility or jail. As used in this section, the juvenile-family crisis intervention unit means that unit established pursuant to P.L.1982, c.80 (C.2A:4A-76 et seq.).

b. An officer taking a juvenile into short-term custody shall inform the juvenile of the reason for custody and shall where possible transport, or arrange to have the juvenile transported to his home. The officer releasing a juvenile from such custody shall inform the juvenile's parents or guardian and the juvenile-family crisis intervention unit of the reason for taking the juvenile into custody and may, if he believes further services are needed, inform the juvenile and his parents of the nature and location of appropriate services.

c. A law enforcement officer taking a juvenile into short-term custody may transport the juvenile to the home of a relative of the juvenile or to the home of another responsible adult or make arrangement for such transportation where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in custody of the adult until such time as the juvenile-family crisis intervention unit can bring about the child's return home or an alternative living arrangement or out of home placement. A law enforcement officer placing a juvenile with a relative or responsible adult shall immediately notify the juvenile-family crisis intervention unit of this fact and the reason for taking the juvenile into custody.

d. A law enforcement officer acting reasonably and in good faith pursuant to this section in releasing a juvenile to a person other than a parent of a juvenile is immune from civil or criminal liability for his action. A person other than a parent of the juvenile who receives a child pursuant to this section and who acts reasonably and in good faith in doing so is immune from civil or criminal liability for the act of receiving the child. Immunity shall not release a person from liability under any other laws, including the laws regulating licensed child care or prohibiting child abuse and neglect.

7. Section 18 of P.L.1982, c.77 (C.2A:4A-37) is amended to read as follows:

C.2A:4A-37 Place of detention or shelter.

18. Place of detention or shelter. a. The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) shall specify the place where a juvenile may be detained; and the Department of Human Services shall specify where a juvenile may be placed in shelter.

b. No juvenile shall be placed in detention or shelter care in any place other than that specified by the Juvenile Justice Commission or Department of Human Services as provided in subsection a.

c. A juvenile being held for a charge under this act or for a violation of or contempt in connection with a violation of Title 39 of the Revised Statutes, chapter 7 of Title 12 of the Revised Statutes or N.J.S.2C:33-13, including a juvenile who has reached the age of 18 years after being charged, shall not be placed in any prison, jail or lockup nor detained in any police station, except that if no other facility is reasonably available a juvenile may be held in a police station in a place other than one designed for the detention of prisoners and apart from any adult charged with or convicted of crime for a brief period if such holding is necessary to allow release to his parent, guardian, other suitable person, or approved facility. No juvenile shall be placed in a detention facility which has reached its maximum population capacity, as designated by the Juvenile Justice Commission.

d. No juvenile charged with delinquency shall be transferred to an adult county jail solely by reason of having reached age 18.

e. (1) The Juvenile Justice Commission and the Department of Human Services shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for juvenile detention facilities or shelters under their respective supervision.

(2) The Juvenile Justice Commission and the Department of Human Services, in consultation with the appropriate county administrator of the county facility or shelter, shall assign a maximum population capacity for each juvenile detention facility or shelter based on minimum standards for these facilities.

f. (1) Where either the Juvenile Justice Commission or the Department of Human Services determines that a juvenile detention facility or shelter under its control or authority is regularly over the maximum population capacity or is in willful and contin-

uous disregard of the minimum standards for these facilities or shelters, the commission or department may restrict new admissions to the facility or shelter.

(2) Upon making such determination, the commission or department shall notify the governing body of the appropriate county of its decision to impose such a restriction, which notification shall include a written statement specifying the reasons therefor and corrections to be made. If the commission or department shall determine that no appropriate action has been initiated by the administrator of the facility or shelter within 60 days following such notification to correct the violations specified in the notification, it shall order that such juvenile detention facility or shelter shall immediately cease to admit juveniles. The county shall be entitled to a hearing where such a restriction is imposed by the commission or department.

(3) Any juvenile detention facility or shelter so restricted shall continue under such order until such time as the commission or department determines that the violation specified in the notice has been corrected or that the facility or shelter has initiated actions which will ensure the correction of said violations.

(4) Upon the issuance of an order to cease admissions to a juvenile detention facility or shelter, the commission or department shall determine whether other juvenile detention facilities or shelters have adequate room for admitting juveniles and shall assign the juveniles to the facilities or shelters on the basis of available space; provided that the department shall not assign the juvenile to a facility or shelter where such facility or shelter is at the maximum population. A juvenile detention facility or shelter ordered to accept a juvenile shall do so within five days following the receipt of an order to accept admission of such juvenile.

(5) A juvenile detention facility or shelter restricted by an order to cease admissions shall assume responsibility for the transportation of a juvenile sent to another juvenile detention facility or shelter so long as the order shall remain in effect.

(6) A facility or shelter receiving juveniles pursuant to paragraph (4) of this subsection shall receive from the sending county a reasonable and appropriate per diem allowance for each juvenile sent to the facility, such allowance to be used for the custody, care, maintenance, and any other services normally provided by the county to juveniles in the facility or shelter and which reflects all county expenditures in maintaining such juvenile, including a proportionate share of all buildings and grounds costs, personnel

costs, including fringe benefits, administrative costs and all other direct and indirect costs.

(7) The governing body of a county whose juvenile detention facility or shelter has been prohibited from accepting new admissions, and whose juveniles have been assigned to other juvenile detention facilities or shelters, shall appropriate an amount to pay the county receiving such juveniles for all expenses incurred pursuant to paragraph (6) of this subsection.

8. Section 19 of P.L.1982, c.77 (C.2A:4A-38) is amended to read as follows:

C.2A:4A-38 Detention hearing.

19. Detention hearing. a. When a juvenile is taken into custody and detained a complaint shall be filed forthwith as provided by the Rules of Court. The court shall determine whether detention is required pursuant to the criteria provided for in section 15 of P.L.1982, c.77 (C.2A:4A-34).

b. Notice of the detention hearing, either oral or written, stating the time, place, and purpose of the hearing shall be given to the juvenile and to the juvenile's parent or parents, or guardian, if any, if they can be contacted.

c. The detention hearing shall be conducted in accordance with the Rules of Court and shall be attended by the juvenile and one or both parents, or guardian, but may take place in the absence of parent or guardian if such notice or process fails to produce their attendance.

d. When the judge finds that detention is not necessary or required, the court shall order the juvenile's release and may place such conditions, if any, upon release as are consistent with the purposes of this act, the Rules of Court, and as are provided for in section 15 of P.L.1982, c.77 (C.2A:4A-34).

e. The initial detention hearing shall be held no later than the morning following the juvenile's placement in detention including weekends and holidays.

f. If a delinquency complaint has not been filed by the time the initial detention hearing has been held, the juvenile shall be released from custody immediately.

g. When the court determines that detention is necessary pursuant to section 15 of P.L.1982, c.77 (C.2A:4A-34), the court order continuing the juvenile's detention shall be supported by reasons and findings of fact on the record.

h. If the juvenile is not represented by counsel at the initial detention hearing and if the court continues the juvenile's detention after the hearing, the court shall forthwith schedule a second detention hearing to be held within two court days thereafter at which time the juvenile shall be represented by counsel as provided by the Rules of Court.

i. There shall be a probable cause determination where a juvenile has been charged with delinquency and has been placed in detention, within two court days after the initial hearing or, where a second detention hearing is necessary pursuant to subsection h. of this section, at that hearing.

j. A detention review hearing with counsel shall be held within 14 court days of the prior detention hearing and if detention is continued, detention review hearings shall be held thereafter at intervals not to exceed 21 court days.

k. When a juvenile is detained, an adjudicatory hearing shall be held no later than 30 days from the date of detention. If no adjudicatory hearing is held within 30 days, the court shall, within 72 hours of a motion by the juvenile, fix a date certain for the adjudicatory hearing unless an extension is granted by the court for good cause shown. Written notice of any application for a postponement shall be sent to the juvenile's counsel who shall have the right to be heard on the application.

l. When a juvenile has been adjudicated delinquent and is awaiting transfer to a dispositional alternative that does not involve a secure residential or out-of-home placement and continued detention is necessary, the juvenile shall be transferred to a non-secure facility.

9. 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 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.

10. Section 24 of P.L.1982, c.77 (C.2A:4A-43) is amended to read as follows:

C.2A:4A-43 Disposition of delinquent 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; and

(8) Any other circumstances related to the offense and the juvenile's social history as deemed appropriate by the court.

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; or

(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.

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 commit-

ted 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.

11. 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 commis-

sion 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.

(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.

12. Section 1 of P.L.1992, c.211 (C.2A:4A-44.1) is amended to read as follows:

C.2A:4A-44.1 State incarceration of juveniles in county juvenile detention facilities.

1. The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) may enter into an agreement with any county concerning the use of that county's juvenile detention facility for the housing of juveniles the court has placed under the custody of the commission for placement in State correctional facilities only if the county's juvenile detention facility is not over its maximum rated capacity.

Unless the contract otherwise provides or the commission so directs in order to provide for the secure and orderly operation of

the facility, a juvenile placed in a county detention facility pursuant to the provisions of this act shall not be segregated from the juveniles otherwise placed in the county detention facility or excluded from any program or activity offered in that facility.

Any contract entered into pursuant to this section shall ensure that educational, vocational, mental health, health and rehabilitative services are provided to the juveniles and that these services are, at minimum, equivalent to those provided to adjudicated juveniles in State-operated facilities.

13. Section 26 of P.L.1982, c.77 (C.2A:4A-45) is amended to read as follows:

C.2A:4A-45 Retention of jurisdiction.

26. Retention of jurisdiction.

a. The court shall retain jurisdiction over any case in which it has entered a disposition under paragraph 7 of subsection b. or subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or under section 25 of P.L.1982, c.77 (C.2A:4A-44) for the duration of that disposition of commitment or incarceration and may substitute any disposition otherwise available to it under section 24 of P.L.1982, c.77 (C.2A:4A-43) other than incarceration.

b. Except as provided for in subsection a., the court shall retain jurisdiction over any case in which it has entered a disposition under section 24 of P.L.1982, c.77 (C.2A:4A-43) and may at any time for the duration of that disposition, if after hearing, and notice to the prosecuting attorney, it finds violation of the conditions of the order of disposition, substitute any other disposition which it might have made originally.

c. The court may by its order retain jurisdiction in any other case.

14. Section 27 of P.L.1982, c.77 (C.2A:4A-46) is amended to read as follows:

C.2A:4A-46 Disposition of juvenile-family crisis.

27. Disposition of juvenile-family crisis. a. The court may order any disposition in a juvenile-family crisis provided for in paragraphs (2), (4), (5), (6), (7) and (13) of subsection b. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or other disposition specifically provided for in P.L.1982, c.80 (C.2A:4A-76 et seq.).

b. No juvenile involved in a juvenile-family crisis shall be committed to or placed in any institution or facility established for the care of delinquent children or in any facility, other than an

institution for the mentally retarded, a mental hospital or facility for the care of persons addicted to controlled dangerous substances, which physically restricts such juvenile committed to or placed in it.

15. 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; and

(7) The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

b. Records of law enforcement agencies may be disclosed for law enforcement purposes 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. 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 or local law enforcement agencies of this State, another state, or the United States.

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. 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, and 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. The court shall have the authority to limit and control the attendance in any manner and to the extent it deems appropriate.

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.

16. 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; and

(9) Whether diversion can be accomplished in a manner that holds the juvenile accountable for the conduct.

c. Each juvenile shall be reviewed without a presumption of guilt. The intake conference shall be concerned primarily 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 the juvenile's rehabilitation, 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.

17. Section 13 of P.L.1982, c.80 (C.2A:4A-88) is amended to read as follows:

C.2A:4A-88 Temporary placement.

13. Temporary placement.

Placement of the juvenile prior to the placement hearing or pending determination by the court concerning placement under a family service plan, pursuant to section 14 of P.L.1982, c.80 (C.2A:4A-89), shall be made in a host shelter, foster or group home, a county shelter care facility as defined by law, or other suitable family setting. In no event shall such placement be arranged in a secure detention or other facility or in a secure correctional institution for the detention or treatment of juveniles accused of crimes or adjudged delinquent.

18. 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 offender; definition.

2. a. A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section. A person who

fails to register as required under this act shall be guilty of a crime of the fourth degree.

b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1 or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1, criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender is not the parent of the victim; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

c. A person required to register under the provisions of this act shall do so on forms to be provided by the designated registering agency as follows:

(1) A person who is required to register and who is under supervision in the community on probation, parole, furlough, work release, or a similar program, shall register at the time the person is placed under supervision or no later than 120 days after

the effective date of this act, whichever is later, in accordance with procedures established by the Department of Corrections, the Department of Human Services, 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. 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.

19. Section 3 of P.L.1994, c.133 (C.2C:7-3) is amended to read as follows:

C.2C:7-3 Notice of obligation to register.

3. Notice of the obligation to register shall be provided as follows:

(1) A court imposing a sentence, disposition or order of commitment following acquittal by reason of insanity shall notify the defendant of the obligation to register pursuant to section 2 of this act.

(2) The Department of Corrections, the Administrative Office of the Courts, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) and the Department of Human Services shall (a) establish procedures for notifying persons under their supervision of the obligation to register pursuant to this act and (b) establish procedures for registration by persons with the appropriate law enforcement agency who are under supervision in the community on probation, parole, furlough, work release or similar program outside the facility, and registration with the appropriate law enforcement agency of persons who are released from the facility in which they are confined without supervision.

(3) The Division of Motor Vehicles in the Department of Law and Public Safety shall provide notice of the obligation to register pursuant to this section in connection with each application for a license to operate a motor vehicle and each application for an identification card issued pursuant to section 2 of P.L.1980, c.47 (C.39:3-29.3).

(4) The Attorney General shall cause notice of the obligation to register to be published in a manner reasonably calculated to reach the general public within 30 days of the effective date of this act.

20. Section 4 of P.L.1994, c.133 (C.2C:7-4) is amended to read as follows:

C.2C:7-4 Forms of registration.

4. a. Within 60 days of the effective date of this act, the Superintendent of State Police, with the approval of the Attorney General, shall prepare the form of registration statement as

required in subsection b. of this section and shall provide such forms to each organized full-time municipal police department, the Department of Corrections, the Administrative Office of the Courts and the Department of Human Services. In addition, the Superintendent of State Police shall make such forms available to the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

b. The form of registration required by this act shall include:

(1) A statement in writing signed by the person required to register acknowledging that the person has been advised of the duty to register and reregister imposed by this act and including the person's name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, address of any current temporary residence, date and place of employment;

(2) Date and place of each conviction, adjudication or acquittal by reason of insanity, indictment number, fingerprints, and a brief description of the crime or crimes for which registration is required; and

(3) Any other information that the Attorney General deems necessary to assess risk of future commission of a crime, including criminal and corrections records, nonprivileged personnel, treatment, and abuse registry records, and evidentiary genetic markers when available.

c. Within three days of receipt of a registration pursuant to subsection c. of section 2 of this act, the registering agency shall forward the statement and any other required information to the prosecutor who shall, as soon as practicable, transmit the form of registration to the Superintendent of State Police, and, if the registrant will reside in a different county, to the prosecutor of the county in which the person will reside. The prosecutor of the county in which the person will reside shall transmit the form of registration to the law enforcement agency responsible for the municipality in which the person will reside and other appropriate law enforcement agencies. The superintendent shall promptly transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

d. The Superintendent of State Police shall maintain a central registry of registrations provided pursuant to this act.

21. N.J.S.2C:39-6 is amended to read as follows:

Exemptions.

2C:39-6. a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park ranger, or State conservation officer;

(5) A prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a correction officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;

(7) (a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c.439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or munici-

pality, 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 Bureau of Parole in the Department of Corrections at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services; or

(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.

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 con-

trol of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being

vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than $100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in 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.

22. Section 4 of P.L.1993, c.364 (C.2C:43-2.2) is amended to read as follows:

C.2C:43-2.2 Issuance of court order requiring serological tests.

4. a. In addition to any other disposition made pursuant to law, a court shall order a person convicted of, indicted for or formally charged with, or a juvenile charged with delinquency or adjudicated delinquent for an act which if committed by an adult would constitute, aggravated sexual assault or sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2 to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS. The court shall issue such an order only upon the request of the victim and upon application of the prosecutor made at the time of indictment, charge, conviction or adjudication of delinquency. The person or juvenile shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary.

As used in this section, "formal charge" includes a proceeding by accusation in the event that the defendant has waived the right to an indictment.

b. A court order issued pursuant to subsection a. of this section shall require testing to be performed as soon as practicable by the Commissioner of the Department of Corrections pursuant to authority granted to the commissioner by sections 6 and 10 of P.L.1976, c.98 (C.30:1B-6 and 30:1B-10), by a provider of health care, at a health facility licensed pursuant to section 12 of P.L.1971, c.136 (C.26:2H-12) or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170). The order shall also require that the results of the test be reported to the offender and to the appropriate Office of Victim-Witness Advocacy.

c. The Office of Victim-Witness Advocacy, established pursuant to section 5 of P.L.1985, c.404 (C.52:4B-43), shall reimburse the Department of Corrections, Department of Health or the Juvenile Justice Commission for the direct costs incurred by these departments for any tests ordered by a court pursuant to subsection a. of this section. Reimbursement shall be made following a request from the department.

d. In addition to any other disposition authorized, a court may order an offender at the time of sentencing to reimburse the State for the costs of the tests ordered by subsection a. of this section.

e. Upon receipt of the result of a test ordered pursuant to subsection a. of this section, the Office of Victim-Witness Advocacy shall provide the victim with appropriate counseling, referral for counseling and if appropriate, referral for health care. The office shall notify the victim or make appropriate arrangements for the victim to be notified of the test result.

f. The result of a test ordered pursuant to subsection a. of this section shall be confidential and employees of the Department of Corrections, the Juvenile Justice Commission, the Office of Victim-Witness Advocacy, a health care provider, health care facility or counseling service shall not disclose the result of a test performed pursuant to this section except as authorized herein or as otherwise authorized by law or court order. The provisions of this section shall not be deemed to prohibit disclosure of a test result to the person tested.

g. Persons who perform tests ordered pursuant to subsection a. of this section in accordance with accepted medical standards for the performance of such tests shall be immune from civil and criminal liability arising from their conduct.

h. This section shall not be construed to preclude or limit any other testing for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS which is otherwise permitted by statute, court rule or common law.

23. Section 2 of P.L.1955, c.55 (C.9:23-2) is amended to read as follows:

C.9:23-2 Appointment of compact administrator.

2. Pursuant to said compact, the Governor is hereby authorized and empowered to designate an officer within the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) who shall be the compact administrator and who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is hereby authorized, empowered and directed to co-operate with all departments, agencies and officers of and in the government of this State and its political subdivisions in facilitating the proper

administration of the compact or of any supplementary agreement or agreements entered into by this State thereunder.

24. Section 6 of P.L.1979, c.207 (C.18A:7B-2) is amended to read as follows:

C.18A:7B-2 Deductions, forwarding of sums to appropriate departments; disposition.

6. a. For each child who is resident in a district and in a State facility on the last school day prior to October 16 of the prebudget year, the Commissioner of Education shall deduct from the State aid payable to such district an amount equal to the State foundation amount plus the appropriate special education aid.

b. If, for any district, the amount to be deducted pursuant to subsection a. of this section is greater than State aid payable to the district, the district shall pay to the Department of Education the difference between the amount to be deducted and the State aid payable to the district.

c. The amount deducted pursuant to subsection a. of this section and the amount paid to the Department of Education pursuant to subsection b. of this section shall be forwarded to the Department of Human Services if the facility is operated by or under contract with that department, or to the Department of Corrections if the facility is operated by that department, or to the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) if the facility is operated by that commission, and shall serve as payment by the district of tuition for the child. This amount shall be used solely for the support of educational programs and shall be maintained in a separate account for that purpose. No district shall be responsible for the tuition of any child admitted to a State facility after the last school day prior to October 16 of the prebudget year.

25. Section 8 of P.L.1979, c.207 (C.18A:7B-4) is amended to read as follows:

C.18A:7B-4 Use of funds; authorization for appropriations.

8. Funds received pursuant to this act by the Department of Human Services, by the Department of Corrections or by the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) shall be used only for the salaries of teachers, educational administrators at the program level, child study team personnel, clerical staff assigned to child study

teams or to educational day programs, paraprofessionals assigned to educational programs in State facilities, and for diagnostic services required as part of the child study team evaluations and related educational services personnel whose function requires an educational certificate issued by the State Department of Education, and for the costs of educational materials, supplies and equipment for these programs. No such funds shall be used for the renovation or construction of capital facilities, for the maintenance and operation of educational facilities, or for custodial, habilitation or other noneducational costs.

There are hereby authorized to be appropriated to the Departments of Human Services and Corrections such funds as may be necessary to provide for adult, post-secondary and college programs.

26. Section 19 of P.L.1979, c.207 (C.18A:7B-12) is amended to read as follows:

C.18A:7B-12 Determination of district of residence.

19. For school funding purposes, the Commissioner of Education shall determine district of residence as follows:

a. The district of residence for children in foster homes shall be the district in which the foster parents reside. If a child in a foster home is subsequently placed in a State facility or by a State agency, the district of residence of the child shall then be determined as if no such foster placement had occurred.

b. The district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes, private schools or out-of-State facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.

If this cannot be determined, the district of residence shall be the district in which the child resided prior to such admission or placement.

c. The district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. For the purpose of this amendatory and supplementary act, "homeless" shall mean an individual who temporarily lacks a fixed, regular and adequate residence.

d. If the district of residence cannot be determined according to the criteria contained herein, or if the criteria contained herein

identify a district of residence outside of the State, the State shall assume fiscal responsibility for the tuition of the child. The tuition shall equal the State foundation amount plus the appropriate special education aid, if any. This amount shall be appropriated in the same manner as other State aid under this act. The Department of Education shall pay the amount to the Department of Human Services, the Department of Corrections or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) or, in the case of a homeless child, to the school district in which the child is enrolled.

27. Section 3 of P.L.1976, c.98 (C.30:1B-3) is amended to read as follows:

C.30:1B-3 Findings, declarations relative to purpose of department.

3. The Legislature hereby finds and declares that the purpose of the department shall be to protect the public and to provide for the custody, care, discipline, training and treatment of adult offenders committed to State correctional institutions or on parole; to supervise and assist in the treatment and training of adult offenders in local correctional and detention facilities, so that such persons may be prepared for release and reintegration into the community; and to cooperate with the other law enforcement agencies of this State to encourage a more unified system of criminal justice.

The Legislature further finds and declares that:

a. There is a need to:

(1) Provide maximum-security confinement of those offenders whose demonstrated propensity to acts of violence requires their separation from the community; and

(2) Develop alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs;

b. The environment for incarcerated persons should encourage the possibilities of rehabilitation and reintegration into the community; and

c. The incarcerated offender should be protected from victimization within the institution.

28. Section 6 of P.L.1976, c.98 (C.30:1B-6) is amended to read as follows:

C.30:1B-6 Powers, duties of commissioner.

6. The commissioner, as administrator and chief executive officer of the department, shall:

a. Administer the work of the department;

b. Appoint and remove officers and other personnel employed within the department, subject to the provisions of Title 11 of the Revised Statutes, Civil Service, and other applicable statutes, except as herein otherwise specifically provided;

c. Perform, exercise and discharge the functions, powers and duties of the department through such divisions as may be established by this act or otherwise by law;

d. Organize the work of the department in such divisions, not inconsistent with the provisions of this act, and in such bureaus and other organizational units as he may determine to be necessary for efficient and effective operation;

e. Formulate, adopt, issue and promulgate, in the name of the department such rules and regulations for the efficient conduct of the work and general administration of the department, the institutions or noninstitutional agencies within its jurisdiction, its officers and employees as may be authorized by law;

f. Determine all matters relating to the unified and continuous development of the institutions and noninstitutional agencies within his jurisdiction;

g. Determine all matters of policy and regulate the administration of the institutions or noninstitutional agencies within his jurisdiction, correct and adjust the same so that each shall function as an integral part of a general system. The rules, regulations, orders and directions promulgated by the commissioner for this purpose shall be accepted and enforced by the executive having charge of any institution or group of institutions or noninstitutional agencies or any phase of the work within the jurisdiction of the department;

h. Institute or cause to be instituted such legal proceedings or processes as may be necessary to enforce properly and give effect to any of his powers or duties; for the purpose of any such investigation, he may cause to be examined under oath any and all persons whatsoever and compel by subpena the attendance of witnesses and the production of such books, records, accounts, papers and other documents as are appropriate. If a witness fails without good cause to attend, testify or produce such records or documents as are directed in the subpena, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons or subpena issued from a court of record in this State;

i. Make a report in each year to the Governor and to the Legislature of the department's operations for the preceding fiscal

year, and render such other reports as the Governor shall from time to time request or as may be required by law;

j. Appoint such advisory committees as may be desirable to advise and assist the department or a division in carrying out its functions and duties;

k. Maintain suitable headquarters for the department and such other quarters as he shall deem necessary to the proper functioning of the department;

l. Develop and from time to time revise and maintain a comprehensive master plan for the State's correctional system which shall indicate, among other things, the department's goals, objectives, resources and needs;

m. Promote the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities;

n. (Deleted by amendment, P.L.1995, c.280);

o. Promote a unified criminal justice system, including the integration of State and local correctional programs and probation and parole services;

p. Provide for the timely and efficient collection and analysis of data regarding the correctional system to insure the continuing review and evaluation of correctional services, policies and procedures; and

q. Perform such other functions as may be prescribed in this act or by any other law.

29. Section 8 of P.L.1976, c.98 (C.30:1B-8) is amended to read as follows:

C.30:1B-8 Transfer to Department of Corrections.

8. The following correctional institutions of this State are hereby transferred from the Department of Institutions and Agencies to the Department of Corrections established hereunder:

New Jersey State Prison,
East Jersey State Prison,
Bayside State Prison,
Garden State Reception and Youth Correctional Facility,
Albert C. Wagner Youth Correctional Facility,
Edna Mahan Correctional Facility for Women,
Mountainview Youth Correctional Facility,
Adult Diagnostic and Treatment Center, Avenel.

Any State institution and satellite facilities heretofore or hereafter established for any purpose similar to the above institutions

and agencies shall be assigned to and maintained and operated by the Department of Corrections.

30. Section 10 of P.L.1976, c.98 (C.30:1B-10) is amended to read as follows:

C.30:1B-10 Transfer of functions and powers to Department of Corrections, rules, regulations.

10. All functions, powers and duties of the Commissioner of Institutions and Agencies and the Department of Institutions and Agencies with respect to all county and city jails or places of detention, county or city workhouses, county penitentiaries, privately maintained institutions and noninstitutional agencies for the care, treatment, government and discipline of adult inmates are hereby transferred to the Department of Corrections established pursuant to section 2 of P.L.1976, c.98 (C.30:1B-2). The commissioner may, in accordance with the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate such rules and regulations as he shall deem necessary to establish minimum standards for such care, treatment, government and discipline.

31. Section 2 of P.L.1969, c.181 (C.30:4-7.2) is amended to read as follows:

C.30:4-7.2 Consent for treatment for certain patients, inmates.

2. The chief executive officer of a State or county institution for the mentally ill or mentally retarded, of a State or county penal or correctional institution or of a juvenile facility or detention center is hereby authorized to give consent for medical, psychiatric, surgical or dental treatment to incompetent patients, inmates or juveniles under age 21, hospitalized or confined therein under circumstances where it appears that

(a) Such patients, inmates or juveniles, because of incompetency or nonage, are legally prevented from giving consent to such treatment, and

(b) Either:

(i) there is no parent or guardian known to such officer, after reasonable inquiry, who is competent to give consent for the treatment of mental patients, or of inmates under the age of 21, or

(ii) where a parent or guardian, after reasonable notice of the proposed treatment and a request for consent, and prior to the date fixed in such notice for the rendering of said treatment,

refuses or neglects to execute and submit to such officer a writing expressing either the grant or denial of such consent, and

(c) Where a licensed physician, psychiatrist, surgeon or dentist certifies that the treatment to be performed is essential and beneficial to the general health and welfare of such patient or inmate, or will improve his opportunity for recovery or prolong or save his life.

32. Section 4 of P.L.1969, c.81 (C.30:4-7.4) is amended to read as follows:

C.30:4-7.4 Notice of required treatment to parent, guardian.

4. Notice of required treatment shall be given to a parent or guardian of such patient, inmate or juvenile by certified mail to the last known address with a request for consent, and such notice shall contain sufficient information to indicate the precise nature of the illness and the proposed treatment and the date same will be performed, and shall be sent at least 10 days in advance of the date recommended for such treatment unless the case is one certified to be emergent, as provided hereinabove, in which case the parent or guardian shall be given the maximum advance notice possible under the circumstances. For the purposes of this act, such notice shall be deemed reasonable notice.

33. Section 4 of P.L.1994, c.134 (C.30:4-82.4) is amended to read as follows:

C.30:4-82.4 Procedures for inmates "in need of involuntary commitment."

4. a. In order to ensure that adult and juvenile inmates who are dangerous to themselves or others because of mental illness and who are "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2), are not released without appropriate supervision and treatment, the board, the Commissioner of the Department of Corrections, the Attorney General, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) and county prosecutors shall follow the procedures set forth in this section.

b. When an adult or juvenile inmate is scheduled for release due to expiration of the inmate's maximum term, the commissioner or the Juvenile Justice Commission shall notify the Attorney General and the prosecutor of the county from which the person was committed if:

(1) The adult inmate's term includes a sentence imposed for conviction of aggravated sexual assault, sexual assault or aggra-

vated criminal sexual contact and the court imposing sentence found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior; or

(2) The parole board or the superintendent of the facility in which the inmate has been confined has advised the commissioner or the Juvenile Justice Commission that the conduct of the inmate during the period of confinement, the inmate's mental condition or the inmate's past history indicates that the inmate may be "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2).

c. Notice required by subsection b. shall be given no less than 90 days before the date on which the inmate's maximum term is scheduled to expire.

d. When such notice is given, the board, the Juvenile Justice Commission or the commissioner shall provide the Attorney General and county prosecutor with all information relevant to a determination of whether the inmate may be "in need of involuntary commitment," including, without regard to classification as confidential pursuant to regulations of the board, of the Department of Corrections or the Juvenile Justice Commission, any preparole report, psychological and medical records, any statement of the reasons for denial of parole and, if applicable, a statement of the reasons for the determination that the inmate may be "in need of involuntary commitment."

e. If the Attorney General or county prosecutor determines, on the basis of the information provided pursuant to this section or N.J.S.2C:47-5, that the inmate may be "in need of involuntary commitment," the Commissioner of Corrections or the Juvenile Justice Commission, upon request of the Attorney General or county prosecutor shall:

(1) Permit persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate in the institution in which he is confined; or

(2) Pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2), arrange for persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate.

f. In the interests of the public safety and the well-being of the inmate, the Attorney General or county prosecutor may exercise discretion to obtain an assessment of the inmate's condition by one or more of the means set forth in subsection e. of this section.

g. The Attorney General or county prosecutor shall provide a psychiatrist or physician assessing or examining an inmate pursu-

ant to this section with all information relevant to the inmate's need of involuntary commitment, including information concerning the inmate's condition, history, recent behavior and any recent act or threat. Any person who assesses or examines an inmate pursuant to this section shall provide the Attorney General and county prosecutor with a written report detailing the person's findings and conclusions.

h. (1) All information, documents and records concerning the inmate's mental condition or classified as confidential pursuant to regulations of the board, of the Department of Corrections or the Juvenile Justice Commission that are received or provided pursuant to this section or N.J.S.2C:47-5 shall be deemed confidential.

(2) Unless authorized or required by court order or except as required in the course of judicial proceedings relating to the inmate's commitment or release, disclosure of such information, documents and records shall be limited to professionals evaluating the inmate's condition pursuant to this section, the Attorney General, county prosecutor and members of their respective staffs as necessary to the performance of duties imposed pursuant to this section.

i. Any person acting in good faith who has provided information relevant to an inmate's need of involuntary commitment or has taken good faith steps to assess an inmate's need of involuntary commitment is immune from civil and criminal liability.

34. Section 1 of P.L.1979, c.441 (C.30:4-123.45) is amended to read as follows:

C.30:4-123.45 Short title, definitions relative to parole.

1. a. This act shall be known and may be cited as the "Parole Act of 1979."

b. In this act, unless a different meaning is plainly required:

(1) "Adult inmate" means any person sentenced as an adult to a term of incarceration.

(2) "Juvenile inmate" means any person under commitment as a juvenile delinquent pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44).

(3) "Parole release date" means that date certified by a member of the board for release of an inmate after a review of the inmate's case pursuant to section 11, 13 or 14 of this act.

(4) "Primary parole eligibility date" means that date established for parole eligibility for adult inmates pursuant to section 7 or 20 of this act.

(5) "Public notice" shall consist of lists including names of all inmates being considered for parole, the county from which he was committed and the crime for which he was incarcerated. At least 30 days prior to parole consideration such lists shall be forwarded to the prosecutor's office of each county, the sentencing court, the office of the Attorney General, any other criminal justice agencies whose information and comment may be relevant, and news organizations.

(6) Removal for "cause" means such substantial cause as is plainly sufficient under the law and sound public policy touching upon qualifications appropriate to a member of the parole board or the administration of said board such that the public interest precludes the member's continuance in office. Such cause includes, but is not limited to, misconduct in office, incapacity, inefficiency and nonfeasance.

(7) "Commission" means the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

(8) "Parole officer" means, with respect to an adult inmate, an officer assigned by the Bureau of Parole and, with respect to a juvenile inmate, a person assigned by the commission.

35. Section 4 of P.L.1979, c.441 (C.30:4-123.48) is amended to read as follows:

C.30:4-123.48 Policies, determinations of parole board.

4. a. All policies and determinations of the Parole Board shall be made by the majority vote of the members.

b. Except where otherwise noted, parole determinations on individual cases pursuant to this act shall be made by the majority vote of a quorum of the appropriate board panel established pursuant to this section.

c. The chairman of the board shall be the chief executive officer of the board and, after consulting with the board, shall be responsible for designating the time and place of all board meetings, for appointing the board's employees, for organizing, controlling and directing the work of the board and its employees, and for preparation and justification of the board's budget. The nonsecretarial professional and supervisory employees of the board such as, but not limited to, hearing officers, shall serve at the pleasure of the chairman and shall not be subject to the provisions of Title 11 of the Revised Statutes. Nothing contained herein shall be deemed to affect the employees of the Department of Corrections, such as parole officers assigned to supervise parolees.

d. The board shall promulgate such reasonable rules and regulations, consistent with this act, as may be necessary for the proper discharge of its responsibilities. The chairman shall file such rules and regulations with the Secretary of State. The provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to the promulgation of rules and regulations concerning policy and administration, but not to other actions taken under this act, such as parole hearings, parole revocation hearings and review of parole cases. In determination of its rules and regulations concerning policy and administration, the board shall consult the Governor, the Commissioner of Corrections and the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

e. The board, in conjunction with the Department of Corrections and the Juvenile Justice Commission, shall develop a uniform information system in order to closely monitor the parole process. Such system shall include participation in the Uniform Parole Reports of the National Council on Crime and Delinquency.

f. The board shall transmit a report of its work for the preceding fiscal year, including information on the causes and extent of parole recidivism, to the Governor, the Legislature and the Juvenile Justice Commission annually.

g. The board shall give public notice prior to considering any adult inmate for release.

h. The board shall give notice to the appropriate prosecutor's office and to the committing court prior to the initial consideration of any juvenile inmate for release.

36. Section 5 of P.L.1979, c.441 (C.30:4-123.49) is amended to read as follows:

C.30:4-123.49 Assignment of cases; member as hearing officer; limitation to either adult or juvenile cases; representatives of board.

5. a. The chairman of the board, after consulting with the board, shall assign any case not otherwise assigned, such as county jail, workhouse, or penitentiary cases, to a special panel composed of any two members or any one member and one senior hearing officer as necessary for the efficient functioning of the board.

b. Nothing contained in this act shall be deemed to preclude a member of any board panel from exercising all the functions, powers, and duties of a hearing officer upon designation by the chairman; provided,

however, that no member so designated shall participate in the disposition of a panel or board review of his initial decision.

c. No hearing officer assigned to review adult cases shall be assigned to review juvenile cases pursuant to sections 13 and 19 of P.L.1979, c.441 (C.30:4-123.57 and 30:4-123.63), nor shall any hearing officer assigned to review juvenile cases be assigned to review adult cases.

d. Representatives of the board or the chairman designated pursuant to this act may include employees of the board and employees of other agencies such as the Department of Corrections or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), provided that no employee of the Department of Corrections or the Juvenile Justice Commission shall be so designated without the approval of the Commissioner of Corrections or the Executive Director of the Commission. Such representatives shall not participate in the disposition of parole cases.

37. Section 1 of P.L.1994, c.135 (C.30:4-123.53a) is amended to read as follows:

C.30:4-123.53a Definitions; notice of release of certain offenders; procedures.

1. a. As used in this act: "Prosecutor" means the county prosecutor of the county in which the defendant was convicted unless the matter was prosecuted by the Attorney General, in which case "prosecutor" means the Attorney General.

"Office of Victim Witness Advocacy" means the Office of Victim Witness Advocacy of the county in which the defendant was convicted.

b. Notwithstanding any other provision of law to the contrary, the Department of Corrections shall provide written notice to the prosecutor of the anticipated release from incarceration in a county or State penal institution or the Adult Diagnostic and Treatment Center of a person convicted of murder; manslaughter; aggravated sexual assault; sexual assault; aggravated assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); any other offense involving serious bodily injury or an attempt to commit any of the aforementioned offenses.

c. Notwithstanding any other provision of law to the contrary, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) shall provide written notice to the prosecutor of the anticipated release from incarceration of a juvenile adjudicated delinquent on the basis of an offense which, if committed by an adult, would constitute murder; manslaughter; aggravated sexual assault; sexual assault; aggravated assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); any other offense involving serious bodily injury or an attempt to commit any of the aforementioned offenses.

d. If available, the notice shall be provided to the prosecutor 90 days before the inmate's anticipated release; provided however, the notice shall be provided at least 30 days before release. The notice shall include the person's name, identifying factors, offense history, and anticipated future residence. The prosecutor shall notify the Office of Victim and Witness Advocacy and that office shall use any reasonable means available to them to notify the victim of the anticipated release unless the victim has requested not to be notified.

e. Upon receipt of notice, the prosecutor shall provide notice to the law enforcement agency responsible for the municipality where the inmate will reside, the municipality in which any victim resides, and such other State and local law enforcement agencies as appropriate for public safety.

38. Section 13 of P.L.1979, c.441 (C.30:4-123.57) is amended to read as follows:

C.30:4-123.57 Review of case of juvenile inmate.

13. a. An assigned member of the board panel on juvenile commitments or a designated hearing officer shall periodically, but not less than quarterly, review the case of each juvenile inmate committed to determine whether release should be granted pursuant to subsection b. of section 9 of P.L.1979, c.441 (C.30:4-123.53).

b. Such review shall include a personal interview of the inmate by the assigned member or the designated hearing officer, and prior to such review a designated representative of the board

panel shall discuss with and explain to the juvenile inmate all documents relevant to the case, excepting those documents which have been classified as confidential pursuant to rules and regulations of the board or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

c. If such review is conducted by a hearing officer, the hearing officer shall, at the conclusion of the review, recommend in writing any appropriate action to the assigned member of the panel on juvenile commitments.

d. At the conclusion of the review, the assigned member of the board panel shall either (1) certify parole release of the juvenile as soon as practicable, or (2) file with the board a statement setting forth the decision of the member, a copy of which statement shall be served upon the juvenile, the juvenile's parents or guardians, and the court.

e. The board panel on juvenile commitments shall at least yearly review the case of each juvenile confined to determine the reasons for the continued confinement of the juvenile. A report of such review shall be forwarded to the board, the Juvenile Justice Commission and the committing court.

39. Section 15 of P.L.1979, c.441 (C.30:4-123.59) is amended to read as follows:

C.30:4-123.59 Parolee supervision; conditions.

15. a. Each adult parolee shall at all times remain in the legal custody of the Commissioner of Corrections and each juvenile parolee shall at all times remain in the legal custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), except that the Commissioner of Corrections or the Executive Director of the Juvenile Justice Commission, after providing notice to the Attorney General, may consent to the supervision of a parolee by the federal government pursuant to the Witness Security Reform Act, Pub.L.98-473 (18 U.S.C.§3251 et seq.). A parolee, except those under the Witness Security Reform Act, shall remain under the supervision of the Bureau of Parole of the Department of Corrections or the Juvenile Justice Commission, as appropriate, in accordance with the rules of the board.

b. Each parolee shall agree, as evidenced by his signature to abide by specific conditions of parole established by the appropriate board panel which shall be enumerated in writing in a certificate of parole and shall be given to the parolee upon release. Such conditions shall include, among other things, a

requirement that the parolee conduct himself in society in compliance with all laws and refrain from committing any crime, a requirement that the parolee will not own or possess any firearm as defined in subsection f. of N.J.S.2C:39-1 or any other weapon enumerated in subsection r. of N.J.S.2C:39-1, a requirement that the parolee refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.2C:35-2 and N.J.S.2C:35-11, a requirement that the parolee obtain permission from his parole officer for any change in his residence, and a requirement that the parolee report at reasonable intervals to an assigned parole officer. In addition, based on prior history of the parolee, the member or board panel certifying parole release pursuant to section 11 of P.L.1979, c.441 (C.30:4-123.55) may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior. Such special conditions may include, among other things, a requirement that the parolee make full or partial restitution, the amount of which restitution shall be set by the sentencing court upon request of the board.

c. The appropriate board panel may in writing relieve a parolee of any parole conditions, and may permit a parolee to reside outside the State pursuant to the provisions of the Uniform Act for Out-of-State Parolee Supervision (N.J.S.2A:168-14 et seq.), the Interstate Compact on Juveniles, P.L.1955, c.55 (C.9:23-1 to 9:23-4), and, with the consent of the Commissioner of the Department of Corrections or the Executive Director of the Juvenile Justice Commission after providing notice to the Attorney General, the federal Witness Security Reform Act, if satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State. The appropriate board panel may revoke such permission, except in the case of a parolee under the Witness Security Reform Act, or reinstate relieved parole conditions for any period of time during which a parolee is under its jurisdiction.

d. The appropriate board panel may parole an inmate to any residential facility funded in whole or in part by the State if the inmate would not otherwise be released pursuant to section 9 of P.L.1979, c.441 (C.30:4-123.53) without such placement. But if the residential facility provides treatment for mental illness or mental retardation, the board panel only may parole the inmate to the facility pursuant to the laws and admissions policies that otherwise govern the admission of persons to that facility, and the

facility shall have the authority to discharge the inmate according to the laws and policies that otherwise govern the discharge of persons from the facility, on 10 days' prior notice to the board panel. The board panel shall acknowledge receipt of this notice in writing prior to the discharge. Upon receipt of the notice the board panel shall resume jurisdiction over the inmate.

e. The assigned parole officer shall provide assistance to the parolee in obtaining employment, education or vocational training or in meeting other obligations.

f. The board panel on juvenile commitments and the assigned parole officer shall insure that the least restrictive available alternative is used for any juvenile parolee.

g. If the board has granted parole to any inmate from a State correctional facility or juvenile facility and the court has imposed a fine on such inmate, the appropriate board panel shall release such inmate on condition that the parolee make specified fine payments to the Bureau of Parole or the Juvenile Justice Commission. For violation of such conditions, or for violation of a special condition requiring restitution, parole may be revoked only for refusal or failure to make a good faith effort to make such payment.

h. Upon collection of the fine the same shall be paid over by the Department of Corrections or by the Juvenile Justice Commission to the State Treasury.

40. Section 16 of P.L.1979, c.441 (C.30:4-123.60) is amended to read as follows:

C.30:4-123.60 Violation of parole conditions.

16. a. Any parolee who violates a condition of parole may be subject to an order pursuant to section 17 of P.L.1979, c.441 (C.30:4-123.61) providing for one or more of the following: (1) That he be required to conform to one or more additional conditions of parole; (2) That he forfeit all or a part of commutation time credits granted pursuant to R.S.30:4-140.

b. Any parolee who has seriously or persistently violated the conditions of his parole, may have his parole revoked and may be returned to custody pursuant to sections 18 and 19 of P.L.1979, c.441 (C.30:4-123.62 and 30:4-123.63). The board shall be notified immediately upon the arrest or indictment of a parolee or upon the filing of charges that the parolee committed an act which, if committed by an adult, would constitute a crime. The board shall not revoke parole on the basis of new charges which

have not resulted in a disposition at the trial level except that upon application by the prosecuting authority, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) or the Chief of the Bureau of Parole, the chairman of the board or his designee may at any time detain the parolee and commence revocation proceedings pursuant to sections 18 and 19 of P.L.1979, c.441 (C.30:4-123.62 and 30:4-123.63) when the chairman determines that the new charges against the parolee are of a serious nature and it appears that the parolee otherwise poses a danger to the public safety. In such cases, a parolee shall be informed that, if he testifies at the revocation proceedings, his testimony and the evidence derived therefrom shall not be used against him in a subsequent criminal prosecution or delinquency adjudication.

c. Any parolee who is convicted of a crime or adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, committed while on parole shall have his parole revoked and shall be returned to custody unless the parolee demonstrates, by clear and convincing evidence at a hearing pursuant to section 19 of P.L.1979, c.441 (C.30:4-123.63), that good cause exists why he should not be returned to confinement.

41. Section 17 of P.L.1979, c.441 (C. 30:4-123.61) is amended to read as follows:

C.30:4-123.61 Violation of conditions of parole; review; appeal.

17. a. If the parole officer assigned to supervise a parolee has probable cause to believe that the parolee has violated a condition of his parole, such violation not being a basis for return to custody pursuant to subsection b. or c. of section 16 of P.L.1979, c.441 (C.30:4-123.60), the officer may require that the parolee appear before a designated representative of the board for a review of the parolee's adjustment.

b. If the board's designated representative finds that a parolee has violated a condition of his parole, such violation not being a basis for return to custody pursuant to subsection b. or c. of section 16 of P.L.1979, c.441 (C.30:4-123.60), the designated representative may subject the parolee to one or both of the actions set forth in subsection a. of section 16 of P.L.1979, c.441 (C.30:4-123.60).

c. A parolee or the parolee's assigned parole officer may apply to the board's designated representative for modification of the conditions of parole.

d. Any action to modify the conditions of parole and any forfeiture of commutation time credits shall be appealable to the appropriate board panel, which may take appropriate action pursuant to subsection a. of section 16 of P.L.1979, c.441 (C.30:4-123.60), but need not conduct a hearing.

42. Section 18 of P.L.1979, c.441 (C.30:4-123.62) is amended to read as follows:

C.30:4-123.62 Parole violation; apprehension; hearing.

18. a. (1) If a parole officer assigned to supervise a parolee has probable cause to believe that the parolee has violated a condition of his parole, such violation being a basis for return to custody pursuant to subsection b. of section 16 of P.L.1979, c.441 (C.30:4-123.60), a designated representative of the chairman of the board may issue a warrant for the arrest of the parolee if evidence indicates that the parolee may not appear at the preliminary hearing or if the parolee poses a danger to the public safety. With the parole warrant, a law enforcement officer may apprehend the delinquent parolee.

(2) If a parole officer assigned to supervise a parolee has probable cause to believe that the parolee has committed a crime, has committed an act or is about to commit an act which, if committed by an adult, would constitute a crime, is about to commit a crime or is about to flee the jurisdiction, which violation is a basis for return to custody pursuant to subsection b. of section 16 of P.L.1979, c.441 (C.30:4-123.60), and the situation is one of immediate emergency that cannot await the issuance of a warrant by a designated representative, the parole officer, by the parole officer's own warrant, may apprehend the parolee and cause his detention in a suitable facility designated by the Department of Corrections or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), as appropriate, or cause the parolee's confinement in an appropriate institution pending return to a facility designated by the Department of Corrections or the Juvenile Justice Commission, as appropriate, to await the conduction of a preliminary hearing. The warrant shall be in the form prescribed, as appropriate, by the Juvenile Justice Commission or by the Bureau of Parole and approved by the Department of Corrections and, when signed by the officer in charge of the case, shall be a sufficient instrument and authority to all peace officers to assist in the apprehension of the parolee. It shall also be sufficient authority for detention of

the parolee in a suitable facility, to await the conduction of the preliminary hearing. Upon enforcement of the warrant, the appropriate board panel shall be promptly notified. No parolee held in custody on a parole warrant shall be entitled to release on bail.

b. A parolee retaken under this section shall within 14 days be granted a preliminary hearing to be conducted by a hearing officer not previously involved in the case, unless the parolee or the hearing officer requests postponement of the preliminary hearing, which may be granted by the appropriate board panel for good cause, but in no event shall such postponement, if requested by the hearing officer, exceed 14 days.

c. The preliminary hearing shall be for the purpose of determining:

(1) Whether there is probable cause to believe that the parolee violated a condition of his parole being the basis for return to custody pursuant to subsection b. of section 16 of P.L.1979, 441 (C.30:4-123.60), and

(2) Whether revocation and return to custody is desirable in the instant matter.

d. Prior to the preliminary hearing the parolee shall be provided with written notice of:

(1) The conditions of parole alleged to have been violated;

(2) The time, date, place and circumstances of the alleged violation;

(3) The possible action which may be taken by the board after a parole revocation hearing;

(4) The time, date and place of the preliminary hearing;

(5) The right pursuant to P.L.1974, c.33 (C.2A:158A-5.1 et seq.), to representation by an attorney or such other qualified person as the parolee may retain; and

(6) The right to confront and cross-examine witnesses.

e. The hearing officer who conducts the hearing shall make a summary or other record of said hearing.

f. If the evidence presented at the preliminary hearing does not support a finding of probable cause to believe that the parolee has violated a condition of his parole, such violation being a basis for return to custody pursuant to subsection b. of section 16 of P.L.1979, c.441 (C.30:4-123.60), or if it is otherwise determined that revocation is not desirable, the hearing officer may, in accordance with the provisions of subsection a. of section 16 of P.L.1979, c.441 (C.30:4-123.60) and section 17 of P.L.1979, c.441 (C.30:4-123.61), issue an order modifying parole and releasing the offender, or continuing parole and releasing the offender.

g. If the evidence presented at the preliminary hearing supports a finding of probable cause to believe that the parolee has violated a condition of his parole, the hearing officer shall determine whether the parolee shall be retained in custody or released on specific conditions pending action by the appropriate board panel.

h. Conviction of a crime committed while on parole or adjudication of delinquency for an act which, if committed by an adult, would constitute a crime shall be deemed to constitute probable cause to believe that the parolee has violated a condition of parole.

43. Section 19 of P.L.1979, c.441 (C.30:4-123.63) is amended to read as follows:

C.30:4-123.63 Revocation of parole; hearing.

19. a. If the hearing officer finds probable cause pursuant to subsection c. (1) of section 18 of P.L.1979, c.441 (C.30:4-123.62) and finds that revocation is desirable pursuant to subsection c. (2) of section 18 of P.L.1979, c.441 (C.30:4-123.62), or if the parolee is convicted of a criminal offense committed while on parole or is adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the board shall cause a revocation hearing to be conducted by a hearing officer, other than the hearing officer previously designated pursuant to section 18 of P.L.1979, c.441 (C.30:4-123.62), within 60 days after the date a parolee is taken into custody as a parole violator unless the parolee or the hearing officer requests postponement of the revocation hearing, which may be granted by appropriate board panel for good cause, but in no event shall such postponement, if requested by the hearing officer, exceed 120 days.

b. Prior to the revocation hearing, the parolee shall be given written notice of:

(1) The time, date and place of the parole revocation hearing;

(2) The right pursuant to P.L.1974, c.33 (C.2A:158A-5.1 et seq.), to representation by an attorney or such other qualified person as the parolee chooses;

(3) The right to confront and cross-examine witnesses, and to rebut documentary evidence against him; and

(4) The right to testify, to present evidence and to subpena witnesses in his own behalf, provided a prima facie showing is made that the prospective witnesses will provide material testimony.

c. The hearing officer shall maintain a full and complete record of the parole revocation hearing.

d. After consideration of all evidence presented, if there is clear and convincing evidence that a parolee has violated the conditions of his parole, such violation being a basis for return to custody pursuant to subsection b. or c. of section 16 of P.L.1979, c.441 (C.30:4-123.60), and if revocation and return to custody is desirable in the instant matter, the appropriate board panel may revoke parole and return such parolee to custody, for a specified length of time, or in accordance with the provisions of sections 16 and 17 of P.L.1979, c.441 (C.30:4-123.60 and 30:4-123.61), or the appropriate board panel may issue an order modifying parole and releasing the offender or continuing parole and releasing the offender.

e. Not more than 21 days following the hearing conducted pursuant to this section, the parolee and his representative shall be informed in writing of the decision, the particular reasons therefor, and the facts relied on.

44. Section 21 of P.L.1979, c.441 (C.30:4-123.65) is amended to read as follows:

C.30:4-123.65 Term limited by sentence.

21. The duration of time served prior to parole, plus the duration of any time served on parole, less any time after warrant for retaking of a parolee was issued pursuant to section 18 of P.L.1979, c.441 (C.30:4-123.62) but before the parolee is arrested, plus the duration of any time served after revocation of parole, shall not exceed the term specified in the original sentence.

45. Section 22 of P.L.1979, c.441 (C.30:4-123.66) is amended to read as follows:

C.30:4-123.66 Discharge from parole prior to maximum term.

22. The appropriate board panel may give any parolee a complete discharge from parole prior to the expiration of the full maximum term for which he was sentenced or as authorized by the disposition, provided that such parolee has made a satisfactory adjustment while on parole, provided that continued supervision is not required, and provided the parolee has made full payment of any fine or restitution.

46. Section 23 of P.L.1979, c.441 (C.30:4-123.67) is amended to read as follows:

C.30:4-123.67 Agreements resulting in reduction of term of parole.

23. a. The appropriate board panel and the Department of Corrections or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) may enter into formal agreements with officials of the board, officials of the Department of Corrections or the Juvenile Justice Commission and individual parolees or inmates reduced to writing and signed by all parties, which agreements stipulate individual programs of education, training, or other activity which shall result in a specified reduction of the parolee's parole term pursuant to section 22 of P.L.1979, c.441 (C.30:4-123.66) or the inmate's primary parole eligibility date pursuant to section 8 of P.L.1979, c.441 (C.30:4-123.52), upon such successful completion of the program.

b. Any parolee or inmate shall be permitted to apply to the board for such an agreement. The board panel shall review all such applications. The board panel may approve any application consistent with eligibility requirements promulgated by the board pursuant to section 4 of P.L.1979, c.441 (C.30:4-123.48). The commission may, by regulation, specify eligibility requirements for agreements with juvenile parolees and inmates and the procedures for effecting such agreements and reviewing juveniles' application for such agreements.

c. Upon approval of the parolee or inmate's application, the board panel shall be responsible for specifying the components necessary for any such agreement. Upon acceptance of the agreement by the Department of Corrections or by the commission, by the board panel and by the parolee or the inmate, the board panel shall reduce the agreement to writing. The parolee or inmate and the Department of Corrections or the Juvenile Justice Commission shall be given a copy of any such agreement.

d. Any such agreement shall be terminated by the board panel in the event the parolee or inmate fails to refuses to satisfactorily complete each component of the agreement. The inmate or parolee shall be notified in writing of any such termination and the reasons therefor. Any such termination may be appealed to the full board pursuant to section 14 of P.L.1979, c.441 (C.30:4-123.58).

47. R.S.30:4-147 is amended to read as follows:

Commitment of males to Youth Correctional Institution Complex.

30:4-147. Any male person who is 14 years of age or older and less than 31 years old, who has been convicted of a crime punish-

able by imprisonment in the State Prison, who has not previously been sentenced to a State Prison in this State, or in any other state, may be committed to the Youth Correctional Institution Complex.

48. R.S.30:4-154 is amended to read as follows:

Commitment of females to Correctional Institution for Women.

30:4-154. Any female above the age of 14 years, convicted of a crime and sentenced to a term of imprisonment, shall be committed to the custody of the Commissioner of Corrections and may be confined in the Correctional Institution for Women.

49. R.S.30:4-157.2 is amended to read as follows:

Warrant of commitment, records.

30:4-157.2. The warrant of commitment to the custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) shall set forth the names of the parents or guardians if they can be ascertained and the juvenile's place of residence. The court shall order transmitted to the commission, by the officer serving the order of commitment a copy of the complaint, a copy of any probation reports, pre-disposition reports, education records, county detention center records, or other records which the county may have concerning the past delinquencies of the juvenile and other information concerning any mental or physical condition which the court deems to be of importance in the rehabilitation of the juvenile or the maintenance of discipline, order and safety in the facility or the operation of the facility or its programs. Such records shall be used for the information and guidance of the facility and the commission but shall not be public records. Such warrants and records shall be forwarded to the commission on, or prior to, the date of the juvenile's admission into the facility.

50. R.S.30:4-157.4 is amended to read as follows:

Expenses for commitment proceedings, board of juvenile.

30:4-157.4. Whenever a juvenile shall be committed to the custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), it shall be the duty of the court, at the time of the examination, to make inquiry as to the ability of the parent or guardian to pay the expenses of the commitment proceedings and the board of the juvenile, and it shall endorse on the warrant of commitment a statement of its finding in that regard.

Payment by the parent or guardian of these costs shall be made to the probation division or county adjuster, whichever the court shall designate; provided, however, that upon collection thereof the costs of the commitment proceedings shall be paid to the county treasurer, and any amount received representing maintenance shall be forwarded to the State Treasurer. In the event of failure of the parent or guardian to pay the amount ordered by the court then the probation division or county adjuster, as the case may be, shall bring the matter before the court for such further order as shall appear proper therein to compel payment.

51. R.S.30:4-157.5 is amended to read as follows:

Fees allowable.

30:4-157.5. For making copies of a complaint and commitment in delinquency proceedings, the court or the clerk thereof shall be entitled to the same fees as are allowed by law for the original complaint and commitment.

The fee for serving process shall be the same and shall be paid in the same manner as for like services in criminal cases.

The sheriff, constable or officer executing a warrant of commitment shall be entitled to a fee of five dollars ($5.00) besides the necessary traveling expenses for himself and the boy.

Other fees shall be the same as are allowed for similar services in the Superior Court, and all such fees shall be paid as other fees are paid in criminal causes.

52. R.S.30:4-157.7 is amended to read as follows:

Juvenile not indentured, bound out to service.

30:4-157.7. No juvenile in custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) shall be indentured or bound out to service.

53. R.S.30:4-157.8 is amended to read as follows:

Placement of paroled juvenile.

30:4-157.8. As a part of the parole system for juveniles, the board may place any juvenile for whose welfare and improvement such course is deemed advisable, at service or employment; may place any juvenile of school age, for whose welfare such course is deemed advisable, to board in a private family, at a cost not to exceed the per capita maintenance cost of confinement in a juve-

nile facility, and may send to properly qualified educational or vocational institutions, for purposes of instruction, any juvenile who has shown a capacity for a more extensive training than the facility can provide, at a cost not to exceed the per capita maintenance rate in the facility.

54. Section 2 of P.L.1961, c.56 (C.52:17B-67) is amended to read as follows:

C.52:17B-67 Definitions.

2. As used in this act:

"Approved school" shall mean a school approved and authorized by the Police Training Commission to give police training courses or a training course for State and county corrections officers and juvenile detention officers as prescribed in this act.

"Commission" shall mean the Police Training Commission or officers or employees thereof acting on its behalf.

"County" shall mean any county which within its jurisdiction has or shall have a law enforcement unit as defined in this act.

"Law enforcement unit" shall mean any police force or organization in a municipality or county which has by statute or ordinance the responsibility of detecting crime and enforcing the general criminal laws of this State.

"Municipality" shall mean a city of any class, township, borough, village, camp meeting association, or any other type of municipality in this State which, within its jurisdiction, has or shall have a law enforcement unit as defined in this act.

"Permanent appointment" shall mean an appointment having permanent status as a police officer in a law enforcement unit as prescribed by Title 11A of the New Jersey Statutes, Merit System Board Rules and Regulations, or of any other law of this State, municipal ordinance, or rules and regulations adopted thereunder.

"Police officer" shall mean any employee of a law enforcement unit, including sheriff's officers and county investigators in the office of the county prosecutor, other than civilian heads thereof, assistant prosecutors and legal assistants, persons appointed pursuant to the provisions of R.S.40:47-19, persons whose duties do not include any police function, court attendants, State and county corrections officers, juvenile corrections officers and juvenile detention officers.

55. Section 6 of P.L.1961, c.56 (C.52:17B-71) is amended to read as follows:

C.52:17B-71 Powers of commission.

6. The commission is vested with the power, responsibility and duty:

a. To prescribe standards for the approval and continuation of approval of schools at which police training courses authorized by this act and in-service police training courses shall be conducted, including but not limited to presently existing regional, county, municipal and police chief association police training schools or at which basic training courses and in-service training courses shall be conducted for State and county juvenile and adult corrections officers and juvenile detention officers;

b. To approve and issue certificates of approval to such schools, to inspect such schools from time to time, and to revoke any approval or certificate issued to such schools;

c. To prescribe the curriculum, the minimum courses of study, attendance requirements, equipment and facilities, and standards of operation for such schools. Courses of study in crime prevention may be recommended to the Police Training Commission by the Crime Prevention Advisory Committee, established by section 2 of P.L.1985, c.1 (C.52:17B-77.1). The Police Training Commission may prescribe psychological and psychiatric examinations for police recruits while in such schools;

d. To prescribe minimum qualifications for instructors at such schools and to certify, as qualified, instructors for approved police training schools and to issue appropriate certificates to such instructors;

e. To certify police officers, corrections officers, juvenile corrections officers and juvenile detention officers who have satisfactorily completed training programs and to issue appropriate certificates to such police officers, corrections officers, juvenile corrections officers and juvenile detention officers;

f. To advise and consent in the appointment of an administrator of police services by the Attorney General pursuant to section 8 of P.L.1961, c.56 (C.52:17B-73);

g. (Deleted by amendment, P.L.1985, c.491.)

h. To make such rules and regulations as may be reasonably necessary or appropriate to accomplish the purposes and objectives of this act;

i. To make a continuous study of police training methods and training methods for corrections officers, juvenile corrections officers and juvenile detention officers and to consult and accept

the cooperation of any recognized federal or State law enforcement agency or educational institution;

j. To consult and cooperate with universities, colleges and institutes in the State for the development of specialized courses of study for police officers in police science and police administration;

k. To consult and cooperate with other departments and agencies of the State concerned with police training or the training of corrections officers, juvenile corrections officers and juvenile detention officers;

l. To participate in unified programs and projects relating to police training and the training of corrections officers, juvenile corrections officers and juvenile detention officers sponsored by any federal, State, or other public or private agency;

m. To perform such other acts as may be necessary or appropriate to carry out its functions and duties as set forth in this act;

n. To extend the time limit for satisfactory completion of police training programs or programs for the training of corrections officers, juvenile corrections officers and juvenile detention officers upon a finding that health, extraordinary workload or other factors have, singly or in combination, effected a delay in the satisfactory completion of such training program;

o. To furnish approved schools, for inclusion in their regular police training courses and curriculum, with information concerning the advisability of high speed chases, the risk caused thereby, and the benefits resulting therefrom;

p. To review and approve new standards and course curricula developed by the Department of Corrections for both basic and in-service training of State and county corrections officers and juvenile detention officers. These courses for the State corrections officers and juvenile detention officers shall be centrally provided at the Corrections Officers' Training Academy of the Department of Corrections. Courses for the county corrections officers and juvenile detention officers shall also be centrally provided at the Corrections Officers' Training Academy unless an off-grounds training program is established by the county. A county may elect to establish and conduct a basic training program for corrections officers and juvenile detention officers seeking permanent appointment in that county. The Corrections Officers' Training Academy shall develop the curriculum of the basic training program to be conducted by a county.

Repealer.

56. The following are repealed:

Pamphlet Laws:
Laws of 1993, c.283, ss.1-6 (C.30:1B-33 to 30:1B-38 both inclusive);
Laws of 1966, c.293, s.30 (C.52:27D-30);
Laws of 1966, c.293, s.31 (C.52:27D-31).
Revised Statutes:
R.S.30:4-143 and R.S.30:4-149;
R.S.30:4-156 to 30:4-157 both inclusive;
R.S.30:4-157.1, R.S.30:4-157.6 and R.S.30:4-157.9;
R.S.30:8-7 to 30:8-8 both inclusive.

57. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 281

AN ACT concerning juveniles and amending P.L.1982, c.77, P.L.1979, c.396 and P.L.1991, c.329.

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

1. Section 28 of P.L.1982, c.77 (C.2A:4A-47) is amended to read as follows:

C.2A:4A-47 Termination of orders of disposition.

28. a. Any order of disposition entered in a case under this act shall terminate when the juvenile who is the subject of the order attains the age of 18, or three years from the date of the order whichever is later unless such order involves incarceration or is sooner terminated by its terms or by order of the court.

b. Any agency providing services pursuant to any court ordered disposition shall give prior notice to the court at least 30 days before terminating these services which notice shall include the date of intended termination.

c. Upon termination of an order of disposition, maximum term, parole or community supervision the court shall enter an order requiring payment of any amounts owed by the juvenile or the parent or guardian of the juvenile pursuant to the court ordered disposition and shall file a copy of the order with the

Clerk of the Superior Court who shall enter the following information upon the record of docketed judgments;

(1) the name of the juvenile or the juvenile's parent or guardian as judgment debtor;

(2) the amount of the assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and the Victims of Crime Compensation Board as a judgment creditor in that amount;

(3) the amount of any restitution ordered and the name of any person entitled to receive payment as judgment creditors in the amount and according to the priority set by the court;

(4) the amount of any fine and the governmental entity entitled to receive payment pursuant to section 3 of P.L.1979, c.396 (C.2C:46-4.)

(5) the amount of the mandatory Drug Enforcement and Demand Reduction penalty imposed;

(6) the amount of the forensic laboratory fee imposed; and

(7) the date of the order.

Where there is more than one judgment creditor the creditors shall be given priority consistent with the provisions of section 13 of P.L.1991, c.329 (C.2C:46-4.1). These entries shall have the same force as a civil judgment docketed in the Superior Court.

2. Section 3 of P.L.1979, c.396 (C.2C:46-4) is amended to read as follows:

C.2C:46-4 Fines, assessments, restitution; collection; disposition.

3. a. All fines, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and restitution shall be collected as follows:

(1) All fines, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and restitution imposed by the Superior Court or otherwise imposed at the county level, shall be collected by the county probation division except when such fine, assessment or restitution is imposed in conjunction with a custodial sentence to a State correctional facility or in conjunction with a term of incarceration imposed pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) in which event such fine, assessment or restitution shall be collected by the Department of Corrections or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170). An adult prisoner of a State correctional institution or a juvenile serving a term of incarceration imposed pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) who has not paid an assessment imposed pur-

suant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution shall have the assessment or restitution deducted from any income the inmate receives as a result of labor performed at the institution or on any type of work release program or, pursuant to regulations promulgated by the Commissioner of the Department of Corrections or the Juvenile Justice Commission, from any personal account established in the institution for the benefit of the inmate.

(2) All fines, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and restitution imposed by a municipal court shall be collected by the municipal court clerk except if such fine, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), or restitution is ordered as a condition of probation in which event it shall be collected by the county probation division.

b. Except as provided in subsection c. with respect to fines imposed on appeals following convictions in municipal courts, all fines imposed by the Superior Court or otherwise imposed at the county level, shall be paid over by the officer entitled to collect same to:

(1) The county treasurer with respect to fines imposed on defendants who are sentenced to and serve a custodial term, including a term as a condition of probation, in the county jail, workhouse or penitentiary except where such county sentence is served concurrently with a sentence to a State institution; or

(2) The State Treasurer with respect to all other fines.

c. All fines imposed by municipal courts on defendants convicted of crimes, disorderly persons offenses and petty disorderly persons offenses, and all fines imposed following conviction on appeal therefrom, and all forfeitures of bail shall be paid over by the officer entitled to collect same to the treasury of the municipality wherein the municipal court is located.

In the case of an intermunicipal court, fines shall be paid into the municipal treasury of the municipality in which the offense was committed, and costs, fees, and forfeitures of bail shall be apportioned among the several municipalities to which the court's jurisdiction extends according to the ratios of the municipalities' contributions to the total expense of maintaining the court.

d. All assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) shall be forwarded and deposited as provided in that section.

e. All mandatory Drug Enforcement and Demand Reduction penalties imposed pursuant to N.J.S.2C:35-15 shall be forwarded and deposited as provided for in that section.

f. All forensic laboratory fees assessed pursuant to N.J.S.2C:35-20 shall be forwarded and deposited as provided for in that section.

g. All restitution ordered to be paid to the Victims of Crime Compensation Board pursuant to N.J.S.2C:44-2 shall be forwarded to the board for deposit in the Victims of Crime Compensation Board Account.

h. All assessments imposed pursuant to section 11 of P.L.1993, c.220 (C.2C:43-3.2) shall be forwarded and deposited as provided in that section.

3. Section 13 of P.L.1991, c.329 (C.2C:46-4.1) is amended to read as follows:

C.2C:46-4.1 Application of moneys collected; priority.

13. Moneys that are collected in satisfaction of any assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), or in satisfaction of restitution or fines imposed in accordance with the provisions of Title 2C of the New Jersey Statutes or with the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), shall be applied in the following order:

a. first, in satisfaction of all assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1);

b. second, in satisfaction of any restitution ordered;

c. third, in satisfaction of all assessments imposed pursuant to section 11 of P.L.1993, c.220 (C.2C:43-3.2);

d. fourth, in satisfaction of any forensic laboratory fee assessed pursuant to N.J.S.2C:35-20;

e. fifth, in satisfaction of any mandatory Drug Enforcement and Demand Reduction penalty assessed pursuant to N.J.S.2C:35-15; and

f. sixth, in satisfaction of any fine.

4. Section 19 of P.L.1991, c.329 (C.52:4B-8.1) is amended to read as follows:

C.52:4B-8.1 Development of an informational tracking system.

19. a. Within 180 days of the effective date of this act, the Victims of Crime Compensation Board, after consultation with the Attorney General, the Department of Corrections, and the Administrative Office of the Courts, on behalf of the county probation divisions and the municipal court clerks, shall develop a uniform system for recording all information necessary to ensure proper identification, tracking, collection and disposition of moneys owed for:

(1) assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1);

(2) fines and restitutions imposed in accordance with provisions of Title 2C of the New Jersey Statutes;

(3) fees imposed pursuant to N.J.S.2C:35-20;

(4) penalties imposed pursuant to N.J.S.2C:35-15.

b. The Victims of Crime Compensation Board shall use the moneys deposited in the Criminal Disposition and Revenue Collection Fund to defray the costs incurred by the board in developing, implementing, operating and improving the board's component of the uniform system for tracking and collecting revenues described in subsection a. of this section.

c. The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), the Department of Corrections, and the Administrative Office of the Courts, on behalf of the county probation divisions and the municipal court clerks, shall file such reports with the Victims of Crime Compensation Board as required for the operation of the uniform system described in subsection a. of this section.

d. The Victims of Crime Compensation Board shall report annually to the Governor, the Attorney General, the Administrative Director of the Administrative Office of the Courts, the Commissioner of the Department of Corrections, the Juvenile Justice Commission and the Legislature on the development, implementation, improvement and effectiveness of the uniform system and on moneys received, deposited and identified as receivable.

5. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 282

AN ACT concerning county youth services commissions and supplementing Title 52 of the New Jersey Statutes.

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

C.52:17B-180 Qualification for State/Community Partnership Grant Funds.

1. a. In order to qualify for award of State/Community Partnership Grant funds established pursuant to P.L.1995, c.283 (C.52:17B-179) a county shall:

(1) Establish a county youth services commission in accordance with regulations promulgated by the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170);

(2) Submit and obtain Juvenile Justice Commission approval of a biannual comprehensive plan for services and sanctions for juveniles adjudicated or charged as delinquent and programs for the prevention of juvenile delinquency which:

(a) are designed to promote the goals of P.L.1995, c.283 (C.52:17B-179);

(b) provide recommendations for funding of programs, sanctions and services that enhance and expand the range of sanctions and services for juveniles adjudicated or charged as delinquent and programs designed to prevent delinquency;

(c) make services available in geographical locations within the county where juveniles in need reside; and

(d) provide for distribution of State/Community Partnership Grant funds by the county in accordance with contracts or agreements executed by the appropriate county officials in accordance with applicable law.

b. The Juvenile Justice Commission shall establish by regulation:

(1) Specific guidelines as to membership of a county youth services commission;

(2) Specific requirements for the administration of the State/Community Partnership Grant funds awarded by the county.

c. Notwithstanding the provisions of subsection a. of this section, the county governing body may elect, upon annual written request approved by the executive director, to designate a commission, council or agency to assume the responsibilities of a county youth services commission in that county. Approval of such a request shall be contingent upon the governing body demonstrating that the membership of the designated entity is sufficiently representative of persons and agencies interested in the juvenile justice system to permit the entity to perform the duties and responsibilities of a county youth services commission, that the members of the designated entity are otherwise qualified to perform the duties and responsibilities of members of a county youth services commission, and that the designated entity has the

authority and responsibility to carry out the duties and responsibilities of a county youth services commission.

d. A county youth services commission shall:

(1) Recommend to the governing body of the county the approval or disapproval of contracts with local government or private agencies that desire participation in the State/Community Partnership Grant Program;

(2) Monitor the operations of programs receiving State/Community Partnership Grant funds with reference to compliance with standards, policies and rules established by the Juvenile Justice Commission;

(3) Monitor and evaluate the impact of the programs receiving State/Community Partnership Grant funds, including the nature of the offender or at risk populations served by the funded programs, and prepare a written report with relevant documentation, on an annual basis, to be submitted to the Juvenile Justice Commission as part of the commission's biannual plan and annual update; and

(4) Perform such other duties as may be established by the Juvenile Justice Commission to achieve the purposes of P.L.1995, c.284 (C.52:17B-169 et seq.) which creates the Juvenile Justice Commission and P.L.1995, c.283 (C.52:17B-179) which creates the State/Community Partnership Grant Program.

e. No county may use funds received pursuant to this section to supplant or replace existing funds or other resources from federal, State or county government for existing juvenile justice-related programs or for purposes of capital construction or renovation.

f. If a county elects not to participate in the State/Community Partnership Grant Program, the commission is authorized to allocate and expend that county's share of Partnership funding in a manner consistent with the commission's annual Juvenile Justice Master Plan.

2. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 283

AN ACT establishing the State/Community Partnership Grant Program 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-179 State/Community Partnership Grant Program established.

1. a. A State/Community Partnership Grant Program is established within the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) to support, through grants allocated to county youth services commissions established pursuant to P.L.1995, c.282 (C.52:17B-180), facilities, sanctions and services for juveniles adjudicated or charged as delinquent and programs for prevention of juvenile delinquency. This program is established in order to:

(1) Encourage development of sanctions and services for juveniles adjudicated and charged as delinquent and programs for prevention of juvenile delinquency that protect the public, ensure accountability and foster rehabilitation;

(2) Increase the range of sanctions for juveniles adjudicated delinquent;

(3) Reduce overcrowding in State juvenile institutions and other facilities to ensure adequate bedspace for serious, violent and repetitive offenders;

(4) Reduce overcrowding in county detention facilities;

(5) Provide greater access to community-based sanctions and services for minority and female offenders;

(6) Expand programs designed to prevent juvenile delinquency; and

(7) Promote public safety by reducing recidivism.

b. The Juvenile Justice Commission shall administer the State/Community Partnership Grant Program and shall:

(1) Establish criteria and procedures for grant applications and disbursement by regulation;

(2) Determine how best to allocate Partnership funds;

(3) Set standards and procedures for eligibility, operation, supervision and evaluation;

(4) Advise and assist county youth services commissions in preparation of county plans and grant applications;

(5) Award grants;

(6) Set standards for and determine eligibility for continued Partnership funding;

(7) Collect and provide information about community-based services and sanctions; and

(8) Monitor and evaluate implementation of county plans and the provision of services, sanctions and programs provided pursuant to this act.

2. All funds appropriated for the "Alternatives to Juvenile Incarceration Grant Program," established pursuant to P.L.1989, c.197 (C.30:1B-26 et seq.), which have not been obligated or expended as of the effective date of this act, are appropriated for the State/Community Partnership Grant Program.

3. Notwithstanding the provisions of paragraph (1) of subsection b. of section 1 of this act and the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), for monies appropriated for the State/Community Partnership Grant Program for the fiscal year ending June 30, 1996, the executive board of the Juvenile Justice Commission established pursuant to P.L.1995, c.284 (C.52:17B-169 et seq.) shall determine the criteria and procedures for application and disbursement of such grants, publish these criteria and procedures within 30 days of the effective date of this act and disburse the appropriated funds in accordance with these criteria and procedures.

Repealer.

4. P.L.1989, c.197 (C.30:1B-26 et seq.) is repealed.

5. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 284

AN ACT establishing the Juvenile Justice Commission, supplementing Title 52 of the New Jersey Statutes and repealing section 30 of P.L.1982, c.77 and section 16 of P.L.1982, c.80.

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

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. 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;

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.

C.52:17B-170 Juvenile Justice Commission established.

2. a. A Juvenile Justice Commission is established in, but not of, the Department of Law and Public Safety. The commission is allocated to the Department of Law and Public Safety for the purpose of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution. The Attorney General shall be the request officer for the commission within the meaning of section 6 of article 3 of P.L.1944, c.112 (C.52:27B-15) and shall exercise that authority and other administrative functions, powers and duties consistent with the provisions of this act.

b. The commission shall consist of an executive director, an executive board, an advisory council and such facilities, officers, employees and organizational units as provided herein or as otherwise necessary to performance of the commission's duties and responsibilities.

c. The executive director shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor during the Governor's term of office and until a successor is appointed and qualified.

d. The executive board shall consist of the following members: The Attorney General, who shall serve as chair of the executive board; the Commissioner of Corrections and the Commissioner of Human Services, who shall serve as vice-chairs of the executive board; the Commissioner of Education; the chair of the Juvenile Justice Commission advisory council, established pursuant to section 4 of P.L.1995, c.284 (C.52:17B-172); and two members who serve as chairs of a county youth services commission, established pursuant to P.L.1995, c.282 (C.52:17B-180), to

be appointed by the Governor to serve at the Governor's pleasure. The Administrative Director of the Administrative Office of the Courts is invited to participate on the executive board, subject to the approval of the Supreme Court. A member of the executive board may name a designee who shall have the authority to act for the member. Members of the executive board shall serve without compensation for their services to the commission. The executive board shall meet at least quarterly and at such other times as designated by the chair. Except with respect to matters concerning distribution of funds to counties, four members of the executive board shall constitute a quorum to transact business of the executive board and action of the executive board shall require an affirmative vote of four members. A member of the executive board who is also a member of a county youth services commission shall not participate in matters concerning distribution of funds to counties; in these matters, three members of the executive board shall constitute a quorum to transact business and an action of the executive board shall require an affirmative vote of three members.

e. The commission shall have the following powers, duties and responsibilities:

(1) To specify qualifications for and to employ, within the limits of available appropriations and subject to the provisions of P.L.1995, c.284 (C.52:17B-169 et seq.) and Title 11A of the New Jersey Statutes, such staff as are necessary to accomplish the work of the commission or as are needed for the proper performance of the functions and duties of the commission, including but not limited to:

(a) The number of deputy directors, assistant directors, superintendents, assistant superintendents and other assistants who shall be in the unclassified service 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.); and

(b) Juvenile corrections officers;

(2) To utilize such staff of the Department of Law and Public Safety as the Attorney General, within the limits of available appropriations, may make available to the commission;

(3) To organize the work of the commission in appropriate bureaus and other organization units;

(4) To enter into contracts and agreements with State, county and municipal governmental agencies and with private entities for the purpose of providing services and sanctions for juveniles adjudicated or charged as delinquent and programs for prevention of juvenile delinquency;

(5) To contract for the services of professional and technical personnel and consultants as necessary to fulfill the statutory responsibilities of the commission;

(6) To establish minimum standards for the care, treatment, government and discipline of juveniles confined pending, or as a result of, an adjudication of delinquency;

(7) To assume the custody and care of all juveniles committed by court order, law, classification, regulation or contract to the custody of the commission or transferred to the custody of the commission pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176);

(8) To manage and operate all State secure juvenile facilities which shall include the New Jersey Training School for Boys created pursuant to R.S.30:1-7 and transferred to the Commissioner of Corrections pursuant to section 8 of P.L.1976, c.98 (C.30:1B-8) and the Juvenile Medium Security Facility created pursuant to R.S.30:1-7 and both transferred to the commission pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176) and shall include any other secure juvenile facility established by the commission in the future;

(9) To manage and operate all State juvenile facilities or juvenile programs for juveniles adjudicated delinquent which shall include facilities and programs transferred to the commission pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176) or established or contracted for in the future by the commission;

(10) To prepare an annual State Juvenile Justice Master Plan which identifies facilities, sanctions and services available for juveniles adjudicated or charged as delinquent and juvenile delinquency prevention programs and which identifies additional needs based upon the extent and nature of juvenile delinquency and the adequacy and effectiveness of available facilities, services, sanctions and programs;

(11) To approve plans for each county submitted by the county youth services commission pursuant to P.L.1995, c.282 (C.52:17B-180);

(12) To administer the State/Community Partnership Grant Program established pursuant to P.L.1995, c.283 (C.52:17B-179);

(13) To accept from any governmental department or agency, public or private body or any other source, grants or contributions to be used in exercising its power, and in meeting its duties and responsibilities;

(14) To formulate and adopt standards and rules for the efficient conduct of the work of the commission, the facilities, services, sanctions and programs within its jurisdiction, and its officers and employees;

(15) To provide for the development of the facilities, services, sanctions and programs within its jurisdiction and to promote the integration of State, county and local facilities, sanctions, services and programs, including probation and parole;

(16) To institute, or cause to be instituted, such legal proceedings or processes as may be necessary to enforce properly and give effect to any of its powers or duties including the authority to compel by subpoena, subject to the sanction for contempt of subpoena issued by a court, attendance and production of records;

(17) To provide for the timely and efficient collection and analysis of data regarding the juvenile justice system to insure the continuing review and evaluation of services, policies and procedures;

(18) To receive and classify juveniles committed to the custody of the commission;

(19) To supervise compliance with conditions of parole;

(20) To establish appropriate dispositions of juveniles for whom parole has been revoked;

(21) To perform such other functions as may be prescribed by law; and

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

C.52:17B-171 Allocation of functions, powers, duties, authority of commission.

3. The functions, powers, duties and authority of the commission are allocated as follows:

a. The following shall be vested in the executive board and may not be delegated:

(1) Formulation of the policy and direction of the work of the commission to meet the purposes of this act;

(2) Approval of the organization of the work of the commission including establishment of appropriate subdivisions;

(3) Approval of the State Juvenile Justice Master Plan;

(4) Approval of the commission's budget for submission by the Attorney General as request officer;

(5) Promulgation of all rules and regulations;

(6) Designation of an acting executive director to serve in the absence of the executive director, or, in the event of a vacancy in that office;

(7) Establishment of education and training requirements for juvenile corrections officers and other specialists that may be required for supervision of programs for juveniles under the cus-

tody or care of the commission following adjudication of delinquency or release from incarceration; and

(8) Establishing with the Supreme Court a mechanism for coordinating juvenile justice matters.

b. The executive director shall be responsible for the following:

(1) The supervision and management of each secure juvenile facility, juvenile facility and program operated by the commission and, except as provided in paragraph (3) of this subsection with respect to appointment of superintendents, the designation of the chief executive officer for each facility or program who shall be responsible to the executive director for the efficient, economical and proper operation of the facility and who shall exercise the authority to consent to treatment pursuant to sections 2 and 4 of P.L.1969, c.181 (C.30:4-7.2 and 30:4-7.4);

(2) The immediate supervision of the work of the commission and the day to day exercise and performance of the commission's functions, powers, duties and authority;

(3) With the approval of the executive board, the appointment of all deputy directors and superintendents.

c. All functions, powers, duties and authority of the commission set forth in subsection e. of section 2 of P.L.1995, c.284 (C.52:17B-170) not specifically allocated to the executive board or to the executive director shall reside in the executive board but may be delegated to the executive director at the discretion of the executive board.

C.52:17B-172 Advisory council to Juvenile Justice Commission.

4. a. The advisory council to the Juvenile Justice Commission shall consist of the following members:

(1) The Commissioner of the Department of Labor, the Commissioner of the Department of Health, the Commissioner of the Department of Community Affairs, the Commissioner of the Department of Personnel, the Public Defender and a county prosecutor selected by and serving at the pleasure of the Governor or a person designated by one of the forenamed officers to serve in that officer's place;

(2) Nine members who shall be selected for their knowledge, competence, experience or interest in the juvenile justice system. Appointments shall be made as follows: three by the President of the Senate, no more than two of whom shall be of the same political party; three by the Speaker of the General Assembly, no more than two of whom shall be of the same political party and three by the Governor, no more than two of whom shall be of the same political party.

b. The term of office of each public member of the advisory council shall be three years; except that of the first members appointed, one appointed by the Governor, one by the President of the Senate and one by the Speaker of the General Assembly shall be appointed for a term of one year, one appointed by the Governor, one by the President of the Senate and one by the Speaker of the General Assembly shall be appointed for a term of two years and the remaining three members shall be appointed for a term of three years. Each member shall serve until a successor has been appointed and qualified, and vacancies shall be filled in the same manner as the original appointments for the remainder of the unexpired term. A member is eligible for reappointment to the council.

c. The Governor shall appoint the chair of the advisory council from among the members of the council. The chair shall serve at the pleasure of the Governor during the Governor's term of office and until the appointment and qualification of the chair's successor. The members of the council shall elect a vice-chair from among the members of the council.

d. The members of the council shall receive no compensation for their services.

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; and

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.

C.52:17B-174 Juvenile corrections officers.

6. a. The Juvenile Justice Commission shall employ, within the limits of available funds, juvenile corrections officers to staff each State secure juvenile facility and to provide security for other State juvenile facilities and programs including parole programs as deemed appropriate and to perform all other duties related to enforcement of confinement and conditions of release including execution of warrants and legal process. Juvenile cor-

rections officers shall be in the competitive division of the career service established pursuant to N.J.S.11A:3-2, "policemen" within the meaning of section 1 of P.L.1944, c.255 (C.43:16A-1) and members of the Police and Firemen's Retirement System of New Jersey established pursuant to section 2 of P.L.1944, c.255 (C.43:16A-2), and shall be "employees" within the meaning of section 3 of P.L.1941, c.100 (C.34:13A-3).

b. Except as provided in subsection c. of this section, no person shall be appointed as a juvenile corrections officer unless that person:

(1) Is a citizen of the United States;

(2) Is able to read, write and speak the English language well and intelligently;

(3) Has a high school diploma or its equivalent;

(4) Is sound in body and of good health;

(5) Is of good moral character;

(6) Has not been convicted of any offense which would make the person unfit to perform the duties of a juvenile corrections officer;

(7) Has successfully completed the training course approved by the Police Training Commission and required by section 5 of P.L.1988, c.176 (C.52:17B-68.1) or is exempt pursuant to the provisions of that section; and

(8) Meets such other qualifications, including education and training, as may be specified by the commission in consultation with the Department of Personnel.

c. (1) Pending appointment of a full complement of juvenile corrections officers who meet the requirements of subsection b. of this section, the commission and the Commissioner of Corrections shall arrange through agreement for the assignment of corrections officers necessary to fill the positions transferred pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176). Corrections officers assigned to the commission pursuant to such an agreement shall be under the supervision of the commission during the period of assignment as provided by the agreement between the commission and the Commissioner of Corrections. The primary concerns of all agreements governing assignment and supervision shall be public safety and safety within the facilities and programs. No officer assigned pursuant to such an agreement shall, by virtue of such assignment, be considered an employee of the commission or lose or suffer any diminution of any right, power, privilege or benefit to which the employee would otherwise be entitled pursuant to the provisions of Title 11A of the New Jersey Statutes, Title 34 of the Revised Statutes, or Title 43 of the

Revised Statutes, including any rights, powers, privileges or benefits as to salary, seniority, promotion, re-employment, retirement, pension or representation for purposes of collective bargaining;

(2) Notwithstanding the provisions of subsection b. of this section, a corrections officer assigned to the commission pursuant to this section shall not be considered ineligible for the position of juvenile corrections officer solely because the officer does not meet any educational or training requirement the commission may establish and may be appointed as a juvenile corrections officer if the officer applies for such position within 18 months of the effective date of this act. A juvenile corrections officer appointed pursuant to this subsection shall not be deprived of any right or protection provided by Title 11A of the New Jersey Statutes or any pension or retirement system and, notwithstanding any law or regulation to the contrary, shall be eligible to compete for vacant positions within the Department of Corrections with full credit for experience, service and rank earned as an employee of the Department of Corrections and such credit for experience, service and rank earned as an employee of the commission as the Commissioner of Corrections, after consultation with the Commissioner of Personnel, deems appropriate.

d. Each juvenile corrections officer shall by virtue of such employment and in addition to any other power or authority, be empowered to act as an officer for the detection, apprehension, arrest and adjudication of offenders against the law and, subject to regulations promulgated by the commission and conditions set forth in N.J.S.2C:39-6, shall have the authority to possess and carry a firearm.

C.52:17B-175 Responsibilities of other departments.

7. a. Notwithstanding the Juvenile Justice Commission's responsibility for State secure juvenile facilities and State juvenile facilities and programs, the Department of Corrections, through agreement with the commission, shall provide central transportation, communication and other services required by the commission in connection with the operation of these facilities and the custody and care of juveniles confined in the facilities.

b. Notwithstanding the commission's responsibility for State secure juvenile facilities and State juvenile facilities, the Department of Human Services shall provide care and custody for juveniles placed under the care and custody or committed to the department pursuant to paragraphs (5), (6) and (7) of subsection b. of section 24 of P.L.1982, c.77 (C.2A:4A-43).

c. The commission and the Commissioner of the Department of Human Services shall formulate a plan to provide adequate and appropriate mental health services to juveniles in secure juvenile facilities and juvenile facilities operated by the commission. The commission and the Commissioner of the Department of Human Services shall jointly adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedures included in the plan. The plan shall include the following:

(1) Procedures for identifying juveniles in need of such services upon admission to and while in a facility, including procedures for evaluation;

(2) Procedures for providing appropriate and adequate treatment and for terminating treatment when it is no longer needed;

(3) Procedures for ensuring cooperation between employees of the commission and the Department of Human Services; and

(4) Procedures for review and revision of the plan.

d. The commission, through agreement with the Attorney General, the Commissioner of Corrections or the Commissioner of Human Services as appropriate, shall arrange to provide such other services as may be required by the commission and may enter into other agreements as authorized pursuant to R.S.52:14-1 et seq. or any other law of this State.

e. The commission and the Commissioner of the Department of Corrections shall, consistent with applicable State and federal standards, formulate a plan setting forth procedures for transferring custody of any juvenile incarcerated in a juvenile facility who has reached the age of 16 during confinement and whose continued presence in the juvenile facility threatens the public safety, the safety of juvenile offenders, or the ability of the commission to operate the program in the manner intended. The commission and the Commissioner of the Department of Corrections shall jointly adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedures included in the plan.

C.52:17B-176 Facilities, inmates, equipment, personnel, etc. transferred to Juvenile Justice Commission.

8. a. The following are transferred to the Juvenile Justice Commission:

(1) The custody and care of any juvenile adjudicated delinquent and committed or classified to the custody of the Department of Corrections or committed or classified to the custody or care of

the Division of Juvenile Services of the Department of Human Services, pursuant to section 24 of P.L.1982, c.77 (C.2A:4A-43) as modified by Reorganization Plan No. 001-1993, P.L.1993, c.283, and Executive Order No. 93 of 1993, or serving a term of incarceration in a county detention facility pursuant to section 1 of P.L.1992, c.211 (C.2A:4A-44.1);

(2) The New Jersey Training School for Boys created pursuant to R.S.30:1-7 and transferred to the Commissioner of Corrections pursuant to section 8 of P.L.1976, c.98 (C.30:1B-8) and the Juvenile Medium Security Facility created pursuant to R.S.30:1-7;

(3) All residential and day care facilities and programs established pursuant to the powers delegated to the Division of Juvenile Services, Department of Corrections, by the Commissioner of the Department of Corrections pursuant to his powers contained in P.L.1976, c.98 (C.30:1B-1 et seq.), along with all those youth committed to participate therein by court order, law, classification, regulation or contract which were subsequently transferred to the Division of Juvenile Services, Department of Human Services by Reorganization Plan No. 001-1993;

(4) All furnishings and equipment presently located in the institutions and programs of the Division of Juvenile Services and in the institutions and programs of the Department of Corrections transferred to the commission pursuant to subsections b. and c. of this section, and, except as provided in section 6 of P.L.1995, c.284 (C.52:17B-174), all staff assigned to those institutions and programs, including administrative and support staff;

(5) All operating and capital funding demarcated for the institutions and programs set forth in this section, including funding from bonds and funding for administrative costs associated with the institutions and programs;

(6) All functions, powers, duties and authority of the Commissioner of Corrections, including any transferred to the Commissioner of Human Services pursuant to Reorganization Plan No. 001-1993, with respect to all juvenile detention facilities throughout the State pursuant to section 18 of P.L.1982, c.77 (C.2A:4A-37);

(7) The powers, duties and responsibilities of the Commissioner of Corrections for establishing standards and monitoring of juvenile detention facilities pursuant to section 18 of P.L.1982, c.77 (C.2A:4A-37), transferred to the Commissioner of Human Services by Reorganization Plan No. 001-1993;

(8) All existing written agreements made between county governments and the Department of Corrections or the Department of

Human Services concerning juvenile detention centers are hereby modified to transfer the responsibilities, duties and obligations specified in these agreements between the county governments and the commission;

(9) The Juvenile Detention Monitoring Unit, Department of Corrections, established pursuant to the powers of the Commissioner of Corrections pursuant to P.L.1976, c.98 (C.30:1B-1 et seq.), to fulfill the obligations of the Department of Corrections in monitoring juvenile detention centers throughout the State pursuant to the Federal "Juvenile Justice and Delinquency Prevention Act of 1974," as amended, and pursuant to section 18 of P.L.1982, c.77 (C.2A:4A-37), which was transferred to the Department of Human Services by Reorganization Plan No. 001-1993, along with its staff, powers, duties and responsibilities;

(10) The legal custody and supervision of each juvenile parolee; the functions, powers, duties and authority of the State Parole Board established pursuant to P.L.1979, c.441 (C.30:4-123.45 et seq.), regarding juvenile offenders are continued, but the State Parole Board shall file all of its reports and recommendations regarding juveniles with the commission;

(11) All funding, programs and positions created or dedicated to provide juvenile parole services by the Bureau of Parole within the Department of Corrections in accordance with an agreement between the Executive Director of the commission and the Commissioner of Corrections in consultation with the State Parole Board when an orderly transfer of the function has been completed including appropriate changes in the reporting requirements, funding, positions, and administrative housing and support;

(12) The powers, duties, and responsibilities of the Office of Education created and established in the Departments of Corrections and Human Services pursuant to the "State Facilities Education Act of 1979," sections 12 and 13 of P.L.1979, c.207 (C.18A:7B-8 and 18A:7B-9) for the education of those juvenile offenders whose custody is transferred to the commission pursuant to this act is transferred to the Office of Education established in the commission pursuant to section 10 of P.L.1995, c.284 (C.52:17B-178) along with staff, existing and future moneys and other educational resources demarcated for juveniles whose custody is transferred pursuant to this act, including funds collected pursuant to the authority granted in the "State Facilities Education Act of 1979," P.L.1979, c.207 (C.18A:7B-1 et seq.), federal and State educational grants and contract funds received for the benefit of juvenile offenders whose custody is transferred pursuant to this act;

(13) The powers, duties, and responsibilities of the Bureau of Juvenile Justice, including the Juvenile Justice and Delinquency Prevention Unit, in the Division of Criminal Justice, Department of Law and Public Safety established pursuant to section 4 of P.L.1948, c.439 (C.52:17B-4), along with its staff, powers, duties and responsibilities; and

(14) All funding appropriated to the Department of Human Services and demarcated for distribution by the department for youth services commission funding.

b. Whenever in any law, rule, regulation, order, contract, lease, document, judicial or administrative proceeding or otherwise, reference is made to the Commissioner of the Department of Corrections regarding a juvenile or juvenile offender as defined in P.L.1982, c.77 (C.2A:4A-20 et seq.), or is made to the Division of Juvenile Services transferred from the Department of Corrections to the Department of Human Services by Reorganization Plan No.001-1993 the same shall mean and refer to the commission.

C.52:17B-177 Transfer of functions, powers, duties, authority.

9. a. Except as otherwise provided in subsection b. of this section and section 6 of P.L.1995, c.284 (C.52:17B-174), all transfers directed by this plan shall be made in accordance with the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.), pursuant to agreements between the commission and the Commissioner of Corrections, the Commissioner of Human Services or the Attorney General, as may be appropriate, that provide for an orderly transfer of functions, powers, duties and authority including appropriate changes in the reporting requirements, funding, positions, and administrative housing. Such agreements shall be made within 90 days of the effective date of this act.

b. (1) Teachers transferred shall retain all tenure or, if non-tenured, all time served toward tenure.

(2) No parole officers or Human Services police officers shall be transferred pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176), but the commission and the Commissioner of Corrections and the Commissioner of Human Services, as appropriate, shall arrange through agreement for the assignment of officers necessary to fill the officer positions transferred pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176). Parole officers and Human Services Police Officers assigned to the commission pursuant to such an agreement shall be under the supervision of the commission during the period of assignment as provided by

the agreement between the commission and the appropriate commissioner but no officer assigned shall, by virtue of such assignment, be considered an employee of the commission or lose or suffer any diminution of any right, power, privilege or benefit to which the employee would otherwise be entitled pursuant to the provisions of Title 11A of the New Jersey Statutes, Title 34 of the Revised Statutes, or Title 43 of the Revised Statutes including any rights, powers, privileges or benefits as to salary, seniority, promotion, re-employment, retirement, pension or representation for purposes of collective bargaining.

(3) All rules and regulations promulgated by the Commissioner of Corrections or the Commissioner of Human Services pertaining to functions, powers, duties and authority transferred to the commission pursuant to section 8 of P.L.1995, c.284 (C.52:17B-176) shall be considered rules or regulations of the commission and, as such, shall remain in full force and effect until expiration or modification by the commission in accordance with law.

C.52:17B-178 Office of Education established.

10. There is hereby created and established in the Juvenile Justice Commission an Office of Education to be headed by a Director of Educational Services who shall supervise the educational programs in all juvenile facilities operated by the Juvenile Justice Commission and shall approve, except as provided in section 9 of P.L.1995, c.284 (C.52:17B-177) all personnel to be hired for such programs.

The director shall hold the appropriate certificate issued by the State Board of Examiners and shall be qualified by training and experience for his position and shall be appointed by the executive director with the approval of the executive board. The director shall serve at the pleasure of the executive board.

The director shall establish primary, secondary, and vocational programs which meet the educational needs of school age persons for whom the commission is responsible. Appropriate credit and certification shall be given for the successful completion of such programs.

Repealer.

11. All acts and parts of acts inconsistent with this act are hereby superseded and repealed, and without limiting the general effect of this act in superseding and repealing acts so inconsistent herewith, the following sections, acts and parts of acts, together with all amendments and supplements thereto, are specifically repealed:

Section 30 of P.L.1982, c.77 (C.2A:4A-49) and section 16 of P.L.1982, c.80 (C.2A:4A-91).

12. This act shall take effect immediately.

Approved December 15, 1995.

CHAPTER 285

AN ACT concerning death by auto and amending N.J.S.2C:11-5.

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

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

Death by auto or vessel.

2C:11-5. Death by auto or vessel. a. Criminal homicide constitutes vehicular homicide when it is caused by driving a vehicle or vessel recklessly.

b. Vehicular homicide is a crime of the second degree.

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

(2) The court shall not impose a mandatory sentence pursuant to paragraph (1) of this subsection unless the grounds therefor have been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a

preponderance of the evidence that the defendant was operating the auto or vessel while under the influence of any intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or with a blood alcohol concentration at or above the level prescribed in R.S.39:4-50 or that the defendant was operating the auto or vessel while his driver's license or reciprocity privilege was suspended or revoked for any violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96. In making its findings, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

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

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

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

2. This act shall take effect immediately and shall be applicable to offenses committed on or after the effective date.

Approved December 21, 1995.

CHAPTER 286

AN ACT concerning the revocation of certain motor vehicle registrations, amending R.S.39:3-40 and supplementing chapter 3 of Title 39 of the Revised Statutes.

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

1. 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.

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, if while operating a vehicle in violation of this section a person is involved in an accident resulting in personal 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;

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.

C.39:3-40.1 Revocation of registration certificate, plates.

2. a. The motor vehicle registration certificate and registration plates of any person who is convicted of violating the provisions of subsection a. of R.S.39:3-40 for operating a motor vehicle during a period when that violator's driver's license has been suspended for a violation of R.S.39:4-50 or subsection b. or c. of R.S.39:3-40 for operating a motor vehicle during a period when that violator's driver's license has been suspended within a five-year period shall be revoked.

This revocation of registration certificate and registration plates shall apply to all passenger automobiles and motorcycles owned or leased by the violator and registered under the provisions of R.S.39:3-4 and all noncommercial trucks owned or leased by the violator and registered under the provisions of section 2 of P.L.1968, c.439 (C.39:3-8.1), including those passenger automobiles, motorcycles and noncommercial trucks registered or leased jointly in the name of the violator and the other owner of record.

b. At the time of conviction, the court shall notify each violator that the person's passenger automobile, motorcycle, and noncommercial truck registrations are revoked. Notwithstanding the provisions of R.S.39:5-35, the violator shall surrender the registration certificate and registration plates of all passenger automobiles, motorcycles, and noncommercial truck registrations subject to revocation under the provisions of this section within 48 hours of the court's notice. The surrender shall be at a place and in a manner prescribed by the Director of the Division of Motor Vehicles pursuant to rule and regulation. The court also shall notify the violator that a failure to surrender that vehicle registration certificate and registration plates shall result in the impoundment of the vehicle in accordance with the provisions of section 4 of P.L.1995, c.286 (C.39:3-40.3) and the seizure of said registration certificate and registration plates. The revocation authorized under the provisions of this subsection shall remain in effect for the period during which the violator's license to operate a motor vehicle is suspended and shall be enforced so as to prohibit the violator from registering or leasing any other vehicle, however acquired, during that period.

c. If the violator subject to the penalties set forth in subsections a. and b. of this section was operating a motor vehicle owned or leased by another person and that other owner or lessee

permitted said operation with knowledge that the violator's driver's license was suspended, the court shall suspend the person's license to operate a motor vehicle and revoke the registration certificate and registration plates for that vehicle for a period of not more than six months. Notwithstanding the provisions of R.S.39:3-35, the owner or lessee shall surrender the registration certificate and registration plates of that vehicle within 48 hours of the court's notice of revocation. The surrender shall be at a place and in a manner prescribed by the Director of the Division of Motor Vehicles pursuant to rule and regulation. The court also shall notify the owner or lessee that a failure to surrender the revoked registration certificate and registration plates shall result in the impoundment of the vehicle in accordance with the provisions of section 4 of P.L.1995, c.286 (C.39:3-40.3) and the seizure of said registration certificate and registration plates. Nothing in this subsection shall be construed to limit the court from finding that owner or lessee guilty of violating R.S.39:3-39 or any other such statute concerning the operation of a motor vehicle by an unlicensed driver.

C.39:3-40.2 Issuance of temporary registration certificate, plates.

3. a. The director may issue a temporary registration certificate and temporary registration plates for a motor vehicle for which the registration certificate and registration plates have been revoked under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1) if:

(1) the name of the applicant for the temporary registration appeared upon the revoked registration certificate as a joint owner of the motor vehicle; or

(2) the applicant for the temporary registration is the spouse, child, dependent, parent or legal guardian of the violator or owner and certifies, in a manner prescribed by the director, that the operation of the motor vehicle is necessary for specified employment, educational, health or medical purposes.

The application shall be in a manner and form prescribed by the director. The application also shall include a signed certification that the applicant shall not knowingly permit the violator to operate the motor vehicle until the violator's license and driving privileges have been restored by the director and that any violation of this provision shall result in the revocation of the temporary registration issued for the motor vehicle under the provisions of this section, that the motor vehicle shall be ineligible for the temporary registration authorized under this act, and that the motor vehicle may be impounded in accordance with the provisions of section 4

of P.L.1995, c.286 (C.39:3-40.3) and the temporary registration certificate and temporary registration plates seized.

b. The director shall issue a temporary registration certificate and temporary registration plates for a motor vehicle registered under the provisions of this section. As prescribed by the director, the temporary registration plates shall bear a special series of numbers or letters so as to be readily identifiable by law enforcement officers.

c. The director may issue a new registration to a lessor of a vehicle for which the registration has been revoked pursuant to section 2 of P.L.1995, c.286 (C.39:3-40.1) provided that the vehicle is not leased to the same lessee.

d. The temporary registration authorized under this section shall expire and become void on the last day of the sixth month following the calendar month in which it was issued. All such temporary registrations may be renewed, upon application, by the director.

The fee schedule for the temporary registration authorized under this section shall be prescribed by the director. The schedule may provide for differing fees based upon the manufacturer's shipping weight and the model year of the motor vehicle; provided, however, that no such temporary registration fee shall exceed $75. The registrant also shall pay a non-recurring $25 fee for the temporary registration plates issued by the director.

C.39:3-40.3 Impoundment of motor vehicles.

4. a. A motor vehicle subject to the provisions of this act may be impounded by any law enforcement officer if the registrant:

(1) knowingly permits an unlicensed driver to operate that motor vehicle;

(2) operates or permits the operation of that motor vehicle without a valid temporary registration or valid temporary registration plates as authorized under section 3 of P.L.1995, c.286 (C.39:3-40.2); or

(3) fails to surrender a registration certificate and registration plates in accordance with the provisions of subsection b. or c. of section 2 of P.L.1995, c.286 (C.39:3-40.1).

A motor vehicle impounded under the provisions of this subsection shall be removed to storage space or garage and its registration certificate and registration plates seized. The registrant shall be responsible for the cost of the removal and storage of the impounded motor vehicle.

b. (1) If the registrant fails to claim the motor vehicle and pay the reasonable costs of removal and storage by midnight of the 30th day following impoundment, along with a fine of $50 to

cover the administrative costs of the municipality wherein the violation occurred, the municipality may sell the motor vehicle at public auction. The municipality shall give notice of the sale by certified mail to the registrant of the motor vehicle and to the holder of any security interest filed with the director, and by publication in a form to be prescribed by the director by one insertion, at least five days before the date of the sale, in one or more newspapers published in this State and circulating in the municipality in which the motor vehicle has been impounded.

(2) At any time prior to the sale, the registrant or other person entitled to the motor vehicle may reclaim possession of it upon payment of the reasonable costs of removal and storage of the motor vehicle and any outstanding fines or penalties; provided, however, if the other person entitled to the motor vehicle is a lessor or the holder of a lien on the motor vehicle, he may reclaim the motor vehicle without payment. In such cases, the violator shall be liable for all outstanding costs, fines and penalties, and the municipality shall have a lien against the property and income of that violator for the total amount of those outstanding costs, fines and penalties.

(3) Any proceeds obtained from the sale of a motor vehicle at public auction pursuant to paragraph (1) of this subsection in excess of the amount owed to the municipality for the reasonable costs of removal and storage of the motor vehicle and any outstanding fines or penalties shall be returned to the registrant of the vehicle.

C.39:3-40.4 Sale, transfer of motor vehicle subject to registration restrictions.

5. A motor vehicle subject to the registration restrictions set forth in sections 2 and 3 of P.L.1995, c.286 (C.39:3-40.1 and C.39:3-40.2) may not be sold or its ownership transferred; and the Division of Motor Vehicles shall not issue a certificate of registration for that vehicle; during the period in which those restrictions remain in effect unless that motor vehicle is sold or transferred for a fair market value.

C.39:3-40.5 Rules, regulations.

6. The director, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act. Those rules and regulations shall include, but not be limited to, provisions providing for a notice:

a. to the lessor or lienholder of any motor vehicle subject to a revocation of registration under the provisions of this act; and

b. to each person whose driver's license has been suspended of the penalties which may be imposed under the provisions of this act.

7. This act shall take effect on the first day of the seventh month following enactment.

Approved December 21, 1995.

CHAPTER 287

AN ACT concerning health insurance coverage pursuant to a child support order and supplementing P.L.1981, c.417 (C.2A:17-56.7 et seq.).

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

C.2A:17-56.11a Responsibilities of employer relative to medical support of employee's child.

1. When an obligor is eligible for health benefits plan coverage which includes dependents and is available through an employer in this State, and the obligor is required by a court or administrative order to provide medical support coverage for his child, the employer who is the payor shall:

a. Permit the obligor to enroll his child under the health benefits plan as a dependent, without regard to any enrollment season restrictions;

b. Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the health benefits plan if the obligor, who is the covered person, fails to enroll the child;

c. Not terminate coverage of the child unless:

(1) the obligor provides the payor with satisfactory written evidence that the court or administrative order is no longer in effect, or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage, or

(2) the payor is no longer providing or making available to its employees health benefits plan coverage which includes dependents; and

d. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health benefits plan coverage for the obligor and the obligor's dependent and pay the withheld amount to the health benefits plan carrier or administrator, as appropriate, subject to federal regulations. The amount withheld shall not exceed the maximum amount permitted to be withheld under section 303(b) of the federal "Consumer Credit Protection Act," 15 U.S.C.§ 1673(b).

2. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 288

AN ACT concerning enrollment of children and others for health insurance coverage 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.), P.L.1992, c.161 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.), chapter 27 of Title 17B of the New Jersey Statutes and P.L.1973, c.337 (C.26:2J-1 et seq.).

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

C.17:48-6.15 Coverage provided by hospital service corporation for subscriber's child.

1. a. A hospital service corporation contract which provides hospital or medical expense benefits under which dependent coverage is available shall not deny coverage for a subscriber's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the subscriber's federal tax return; or

(3) The child does not reside with the subscriber or in the hospital service corporation's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the contract with respect to the use of specified providers.

b. If a child has coverage through a hospital service corporation contract of a noncustodial parent, the hospital service corporation shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the subscriber is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the hospital service corporation shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the contract if the parent who is the subscriber fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the subscriber provides the hospital service corporation with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17:48-6.16 Requirements applicable to State Medicaid.

2. A hospital service corporation shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other subscriber.

C.17:48A-7.10 Coverage provided by medical service corporation for subscriber's child.

3. a. A medical service corporation contract which provides hospital or medical expense benefits under which dependent cov-

erage is available shall not deny coverage for a subscriber's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the subscriber's federal tax return; or

(3) The child does not reside with the subscriber or in the medical service corporation's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the contract with respect to the use of specified providers.

b. If a child has coverage through a medical service corporation contract of a noncustodial parent, the medical service corporation shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the subscriber is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the medical service corporation shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the contract if the parent who is the subscriber fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the subscriber provides the medical service corporation with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17:48A-7.11 Requirements applicable to State Medicaid.

4. A medical service corporation shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other subscriber.

C.17:48E-32.1 Coverage provided by health service corporation for subscriber's child.

5. a. A health service corporation contract which provides hospital or medical expense benefits under which dependent coverage is available shall not deny coverage for a subscriber's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the subscriber's federal tax return; or

(3) The child does not reside with the subscriber or in the health service corporation's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the contract with respect to the use of specified providers.

b. If a child has coverage through a health service corporation contract of a noncustodial parent, the health service corporation shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the subscriber is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the health service corporation shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the

Department of Human Services, to enroll the child under the contract if the parent who is the subscriber fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the subscriber provides the health service corporation with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17:48E-32.2 Requirements applicable to State Medicaid.

6. A health service corporation shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other subscriber.

C.17B:27A-4.1 Individual policy, contract for hospital, medical expense benefits, coverage of subscriber's child.

7. a. A policy or contract which provides hospital or medical expense benefits under which dependent coverage is available shall not deny coverage for a policy or contract holder's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the policy or contract holder's federal tax return; or

(3) The child does not reside with the policy or contract holder or in the carrier's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the policy or contract with respect to the use of specified providers.

b. If a child has coverage through a policy or contract of a noncustodial parent, the carrier shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the policy or contract holder is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the carrier shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the policy or contract if the parent who is the policy or contract holder fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the policy or contract holder provides the carrier with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17B:27A-4.2 Requirements applicable to State Medicaid.

8. A carrier shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other policy or contract holder.

C.17B:27A-18.1 Provision of benefits to subscriber's child under small employer policy, contract.

9. a. A policy or contract which provides hospital or medical expense benefits under which dependent coverage is available shall not deny coverage for a covered employee's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the covered employee's federal tax return; or

(3) The child does not reside with the covered employee or in the carrier's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the policy or contract with respect to the use of specified providers.

b. If a child has coverage through a policy or contract of a noncustodial parent, the carrier shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the covered employee is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the carrier shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the policy or contract if the parent who is the covered employee fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the covered employee provides the carrier with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17B:27A-18.2 Requirements applicable to State Medicaid.

10. A carrier shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other covered employee.

C.17B:27-30.1 Benefits provided by group policy to subscriber's child.

11. a. A policy which provides hospital or medical expense benefits under which dependent coverage is available shall not deny coverage for an insured's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the insured's federal tax return; or

(3) The child does not reside with the insured or in the insurer's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the policy with respect to the use of specified providers.

b. If a child has coverage through a health insurance policy of a noncustodial parent, the insurer shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the insured is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the insurer shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the health insurance policy if the parent who is the insured fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the insured provides the insurer with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17B:27-30.2 Requirements applicable to State Medicaid.

12. An insurer shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other insured.

C.26:2J-10.1 Coverage provided by health maintenance organization for subscriber's child.

13. a. A health maintenance organization contract or certificate in which dependent coverage is available shall not deny coverage for an enrollee's child for health care services on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the enrollee's federal tax return; or

(3) The child does not reside with the enrollee or in the health maintenance organization's service area, provided that the child complies with the terms and conditions of the coverage with respect to the use of specified providers.

b. If a child has coverage through a health maintenance organization plan of a noncustodial parent, the health maintenance organization shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain health care services through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for health care services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the enrollee is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the health maintenance organization shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child if the parent who is the enrollee fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the enrollee provides the health maintenance organization with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a

comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.26:2J-10.2 Requirements applicable to State Medicaid.

14. A health maintenance organization shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other enrollee.

C.17B:27-30.3 Coverage provided by group health plan to subscriber's child.

15. a. A group health plan as defined in section 607(1) of the "Employee Retirement Income Security Act of 1974," 29 U.S.C.§1167(1) which provides hospital or medical expense benefits under which dependent coverage is available shall not deny coverage for a covered employee's child on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the covered employee's federal tax return; or

(3) The child does not reside with the covered employee or in the group health plan's service area, provided that, in the case of a managed care plan, the child complies with the terms and conditions of the plan with respect to the use of specified providers.

b. If a child has coverage through a group health plan of a noncustodial parent, the plan shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through the child's noncustodial parent's coverage;

(2) Permit the custodial parent, or the health care provider with the authorization of the custodial parent, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the health care provider or the Division of Medical Assistance and Health Services in the Department of Human Services which administers the State Medicaid program, as appropriate.

c. When a parent who is the covered employee is eligible for dependent coverage and is required by a court or administrative order to provide health insurance coverage for his child, the group health plan shall:

(1) Permit the parent to enroll his child as a dependent, without regard to any enrollment season restrictions;

(2) Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the group health plan if the parent who is the covered employee fails to enroll the child; and

(3) Not terminate coverage of the child unless the parent who is the covered employee provides the group health plan with satisfactory written evidence that: the court or administrative order is no longer in effect; or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage.

C.17B:27-30.4 Requirements applicable to State Medicaid.

16. A group health plan as defined in section 607(1) of the "Employee Retirement Income Security Act of 1974," 29 U.S.C.§1167(1) shall not impose requirements on the Division of Medical Assistance and Health Services in the Department of Human Services which has been assigned the rights of an individual who is eligible for medical assistance under the State Medicaid program, that are different from requirements applicable to an agent or assignee of any other covered employee.

17. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 289

AN ACT concerning liens imposed by the Medicaid program and amending P.L.1979, c.365 and P.L.1981, c.217.

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

1. Section 7 of P.L.1979, c.365 (C.30:4D-7.2) is amended to read as follows:

C.30:4D-7.2 Lien against recovery sought from estate of recipient, "estate" defined.

7. a. (1) A lien may be filed against and recovery sought from the estate of a deceased recipient for assistance correctly paid or to be paid on his behalf for all services received when he was 65

years of age or older, except as provided in section 1 of P.L.1981, c.217 (C.30:4D-7.2a).

(2) In the case of a recipient who became deceased on or after April 1, 1995 for whom a Medicaid payment was made on or after October 1, 1993, a lien may be filed against and recovery sought from the estate of the deceased recipient for assistance correctly paid or to be paid on his behalf for all services received when he was 55 years of age or older, except as provided in section 1 of P.L.1981, c.217 (C.30:4D-7.2a).

(3) As used in this section, "estate" includes all real and personal property and other assets included in the recipient's estate as defined in N.J.S.3B:1-1, as well as any other real and personal property and other assets in which the recipient had any legal title or interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the recipient through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

b. A lien may be filed by the division against a third party's property, whether real or personal, or against any interest or estate in property, whether vested or contingent.

Subject to section 6 of P.L.1979, c.365 (C.30:4D-7.1), any third party recovery obtained by the division under this subsection shall not be reduced by any counsel fees, costs, or other expenses, or portions thereof, incurred by the recipient or the recipient's attorney.

c. A certificate of debt may be filed by the division against such parties and in such a manner as is specified in subsection (h) of section 17 of P.L.1968, c.413 (C.30:4D-17).

d. (1) A lien, claim or encumbrance imposed by this act shall be deemed a preferred claim against the recipient's estate and shall have a priority equivalent to that under subsection d. of N.J.S.3B:22-2.

(2) In the case of a recipient who became deceased on or after the effective date of P.L.1995, c.289, a lien, claim or encumbrance imposed pursuant to this section shall be deemed a preferred claim against the recipient's estate and shall have a priority equivalent to that under subsection c. of N.J.S.3B:22-2.

2. Section 1 of P.L.1981, c.217 (C.30:4D-7.2a) is amended to read as follows:

C.30:4D-7.2a Encumbrances, recovery limited against certain estates.

1. No encumbrance or recovery shall be imposed against or sought from the estate of a deceased recipient for assistance correctly paid under:

a. The "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.), if: (1) the amount sought to be recovered is less than $500, the gross estate is less than $3,000 or there is a surviving spouse or a surviving child who is under the age of 21 or is blind or permanently and totally disabled, except for assistance incorrectly or illegally paid, or for third party liability recovery sought under P.L.1968, c.413 (C.30:4D-1 et seq.); or (2), in the case of a recipient who became deceased on or after the effective date of P.L.1995, c.289, if there is a surviving spouse or a surviving child who is under the age of 21 or is blind or permanently and totally disabled, except for assistance incorrectly or illegally paid, or for third party liability recovery sought under P.L.1968, c.413 (C.30:4D-1 et seq.); or

b. The "Pharmaceutical Assistance to the Aged and Disabled" program, P.L.1975, c.194 (C.30:4D-20 et seq.), except for assistance incorrectly or illegally paid, or for third party liability recovery sought under P.L.1968, c.413 (C.30:4D-1 et seq.).

3. This act shall take effect immediately and shall be retroactive to April 1, 1995.

Approved December 22, 1995.

CHAPTER 290

AN ACT concerning child support orders for Medicaid-eligible children, amending and supplementing Title 2A of the New Jersey Statutes, and amending P.L.1985, c.278 and P.L.1981, c.239.

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

C.2A:17-56.11b Income withholding provisions extended to cover medical support coverage.

1. The income withholding provisions of P.L.1981, c.417 (C.2A:17-56.7 et seq.) shall be extended to include a withholding

of income from the party responsible for maintaining medical support coverage for a child under a child support order issued pursuant to the provisions of N.J.S.2A:34-23 when the child is eligible for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and the party responsible for maintaining medical support coverage has received payment from a third party for the cost of health care services provided to the child but has not reimbursed the obligee or the health care provider who provided the services for the amount of the payment. A payment received on or after April 1, 1995 shall be subject to the provisions of this section.

The income withholding shall be subject to the following conditions: a. the amount of income withheld shall be to the extent necessary to reimburse the Division of Medical Assistance and Health Services in the Department of Human Services for the costs it incurred in covering the health care services for which the party responsible for maintaining medical support coverage received the payment; and b. the income withholding to reimburse the division shall be subordinate in priority to any other withholding under a child support order.

The Division of Medical Assistance and Health Services in the Department of Human Services, in consultation with the Administrative Office of the Courts, may initiate procedures for the withholding of income pursuant to this section.

As used in this section, "third party" means a third party as defined in section 3 of P.L.1968, c.413 (C.30:4D-3).

2. Section 13 of P.L.1985, c.278 (C.2A:17-56.16) is amended to read as follows:

C.2A:17-56.16 Tax setoff for support, indebtedness cases.

13. The Administrative Office of the Courts shall promulgate rules and regulations concerning procedures for determining which support cases, and which cases of indebtedness in accordance with section 1 of P.L.1995, c.290 (C.2A:17-56.11b), are appropriate for application of tax setoff, for verifying the accuracy of the amounts referred for setoff, notifying the State Department of the Treasury of any child support and other indebtedness subject to section 1 of P.L.1981, c.239 (C.54A:9-8.1) and changes thereto, and any other procedures necessary to comply with Pub.L. 98-378.

3. Section 1 of P.L.1981, c.239 (C.54A:9-8.1) is amended to read as follows:

C.54A:9-8.1 Setoff of indebtedness to State agencies; precedence of child support indebtedness.

1. Whenever any taxpayer or homeowner shall be entitled to any refund of taxes pursuant to the "New Jersey Gross Income Tax Act" (N.J.S.54A:1-1 et seq.) or a homestead property tax rebate pursuant to P.L.1990, c.61 (C.54:4-8.57 et al.), and at the same time the taxpayer or homeowner shall be indebted to any agency or institution of State Government or for child support under Title IV-A, Title IV-D, or Title IV-E of the federal Social Security Act (42 U.S.C. §601 et seq.), or other indebtedness in accordance with section 1 of P.L.1995, c.290 (C.2A:17-56.11b), the Department of the Treasury shall apply or cause to be applied the refund or rebate, or both, or so much of either or both as shall be necessary, to satisfy the indebtedness. Child support indebtedness shall take precedence over all other indebtedness. The Department of the Treasury shall retain a percentage of the proceeds of any collection setoff as shall be necessary to provide for any expenses of the collection effort.

4. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 291

AN ACT concerning health insurance for Medicaid-eligible persons, 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.), P.L.1992, c.162 (C.17B:27A-17 et seq.) and chapter 27 of Title 17B of the New Jersey Statutes, supplementing and amending P.L.1992, c.161, and amending P.L.1973, c.337.

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

C.17:48-6.17 Eligibility for enrollment in hospital service corporation.

1. Notwithstanding any other provision of law to the contrary, a hospital service corporation shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state,

when determining the person's eligibility for enrollment in, or the provision of benefits under, a hospital service corporation contract providing hospital or medical expense benefits delivered, issued or executed in this State, or approved for issuance in this State by the Commissioner of Insurance.

C.17:48A-6.10 Eligibility for enrollment in medical service corporation.

2. Notwithstanding any other provision of law to the contrary, a medical service corporation shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state, when determining the person's eligibility for enrollment in, or the provision of benefits under, a medical service corporation contract providing hospital or medical expense benefits delivered, issued or executed in this State, or approved for issuance in this State by the Commissioner of Insurance.

C.17:48E-15.1 Eligibility for enrollment in health service corporation.

3. Notwithstanding any other provision of law to the contrary, a health service corporation shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state, when determining the person's eligibility for enrollment in, or the provision of benefits under, a health service corporation contract providing hospital or medical expense benefits delivered, issued or executed in this State, or approved for issuance in this State by the Commissioner of Insurance.

C.17B:27A-4.3 Eligibility for enrollment in individual health benefits plan.

4. Notwithstanding any other provision of law to the contrary, a carrier shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state, when determining the person's eligibility for enrollment in, or the provision of benefits under, an individual health benefits plan delivered, issued or executed in this State.

C.17B:27A-21.1 Eligibility for enrollment in small employer health benefits plan.

5. Notwithstanding any other provision of law to the contrary, a carrier shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state, when determining the person's eligibility for enrollment in, or the provision of benefits under, a small employer health benefits plan delivered, issued or executed in this State.

C.17B:27-36.1 Eligibility for enrollment under policy providing hospital, medical expense benefits.

6. Notwithstanding any other provision of law to the contrary, an insurer shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state, when determining the person's eligibility for enrollment in, or the provision of benefits under, a policy providing hospital or medical expense benefits delivered, issued or executed in this State, or approved for issuance in this State by the Commissioner of Insurance.

7. 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 an insurance company, health service corporation or health maintenance organization authorized to issue health benefits plans in this State. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier.

"Commissioner" means the Commissioner of 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.

"Department" means the Department of 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 of the State who is not eligible to be insured under a group health insurance policy or Medicare.

"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.

"Group health benefits plan" means a health benefits plan for groups of two or more persons.

"Health benefits plan" means a hospital and medical expense insurance policy; health service corporation contract; or health maintenance organization subscriber contract delivered or issued

for delivery in this State. For purposes of this act, health benefits plan does not include the following plans, policies, or contracts: accident only, credit, disability, long-term care, Medicare supplement coverage, CHAMPUS supplement coverage, coverage for Medicare services pursuant to a contract with the United States government, coverage for Medicaid services pursuant to a contract with the State, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement indemnity coverage.

"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 established or adopted by two or more employers, by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, to insure employees of the employers or members of the unions or organizations.

"Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Member" means a carrier that is a member of the program pursuant to this act.

"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 or HealthStart Plus contracts with the State or federal government, but shall not include any excess or stop loss coverage issued by a carrier in connection with any self insured health benefits plan, or Medicare supplement policies or contracts.

"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.

"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.

8. 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 and contract forms, benefit levels.

6. The board shall establish the policy and contract forms and benefit levels to be made available by all carriers for the policies required to be issued pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4). 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, except that the limitation shall not apply to an individual who has, under a prior group or individual health benefits plan or Medicaid, with no intervening lapse in coverage of more than 30 days, been treated or diagnosed by a physician for a condition under that plan or satisfied a 12 month preexisting condition limitation.

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.

9. Section 15 of P.L.1973, c.337 (C.26:2J-15) is amended to read as follows:

C.26:2J-15 Prohibited practices for health maintenance organization.

15. a. No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purpose of this act:

(1) a statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

(2) a statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health care

plan, if such benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

(3) an evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans and evidences of coverage therefore, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

b. The unfair trade practice provisions of the New Jersey insurance law (N.J.S.17B:30-1 through 22) shall be construed to apply to health maintenance organizations, health care plans and evidences of coverage except to the extent that the commissioner determines that the nature of health maintenance organizations, health care plans and evidence of coverage render such sections clearly inappropriate.

c. An enrollee may not be canceled or nonrenewed except for the failure to pay the charge for such coverage, or for such other reasons as may be promulgated by the commissioner.

d. No health maintenance organization, unless licensed as an insurer, may use in its name, evidence of coverage, or literature any of the words "insurance," "assurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance, or surety corporation doing business in this State.

e. A health maintenance organization shall not consider a person's eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or the equivalent statute in another state, when determining the person's eligibility for enrollment in, or the provision of health care services under, a contract or certificate for health care services.

The provisions of this section shall be enforced by the State Director of the Division of Consumer Affairs and, where applicable, the commissioner or the Commissioner of Insurance. Nothing in this act shall limit the powers of the Attorney General and the procedures with respect to consumer fraud in P.L.1960, c.39 (C.56:8-1 et seq.).

10. This act shall take effect immediately and section 7 shall be retroactive to April 1, 1995.

Approved December 22, 1995.

CHAPTER 292

AN ACT concerning coverage by third party payers for Medicaid-eligible persons and amending P.L.1968, c.413.

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

1. Section 3 of P.L.1968, c.413 (C.30:4D-3) is amended to read as follows:

C.30:4D-3 Definitions.

3. Definitions. As used in this act, and unless the context otherwise requires:

a. "Applicant" means any person who has made application for purposes of becoming a "qualified applicant."

b. "Commissioner" means the Commissioner of Human Services.

c. "Department" means the Department of Human Services, which is herein designated as the single State agency to administer the provisions of this act.

d. "Director" means the Director of the Division of Medical Assistance and Health Services.

e. "Division" means the Division of Medical Assistance and Health Services.

f. "Medicaid" means the New Jersey Medical Assistance and Health Services Program.

g. "Medical assistance" means payments on behalf of recipients to providers for medical care and services authorized under this act.

h. "Provider" means any person, public or private institution, agency or business concern approved by the division lawfully providing medical care, services, goods and supplies authorized under this act, holding, where applicable, a current valid license to provide such services or to dispense such goods or supplies.

i. "Qualified applicant" means a person who is a resident of this State and is determined to need medical care and services as provided under this act, and who:

(1) Is a recipient of Aid to Families with Dependent Children;

(2) Is a recipient of Supplemental Security Income for the Aged, Blind and Disabled under Title XVI of the Social Security Act;

(3) Is an "ineligible spouse" of a recipient of Supplemental Security Income for the Aged, Blind and Disabled under Title XVI of the Social Security Act, as defined by the federal Social Security Administration;

(4) Would be eligible to receive public assistance under a categorical assistance program except for failure to meet an eligibility condition or requirement imposed under such State program which is prohibited under Title XIX of the federal Social Security Act such as a durational residency requirement, relative responsibility, consent to imposition of a lien;

(5) Is a child between 18 and 21 years of age who would be eligible for Aid to Families with Dependent Children, living in the family group except for lack of school attendance or pursuit of formalized vocational or technical training;

(6) Is an individual under 21 years of age who qualifies for categorical assistance on the basis of financial eligibility, but does not qualify as a dependent child under the State's program of Aid to Families with Dependent Children (AFDC), or groups of such individuals, including but not limited to, children in foster placement under supervision of the Division of Youth and Family Services whose maintenance is being paid in whole or in part from public funds, children placed in a foster home or institution by a private adoption agency in New Jersey or children in intermediate care facilities, including institutions for the mentally retarded, or in psychiatric hospitals;

(7) Meets the standard of need applicable to his circumstances under a categorical assistance program or Supplemental Security Income program, but is not receiving such assistance and applies for medical assistance only;

(8) Is determined to be medically needy and meets all the eligibility requirements described below:

(a) The following individuals are eligible for services, if they are determined to be medically needy:

(i) Pregnant women;

(ii) Dependent children under the age of 21;

(iii) Individuals who are 65 years of age and older; and

(iv) Individuals who are blind or disabled pursuant to either 42 C.F.R.435.530 et seq. or 42 C.F.R.435.540 et seq., respectively.

(b) The following income standard shall be used to determine medically needy eligibility:

(i) For one person and two person households, the income standard shall be the maximum allowable under federal law, but shall not exceed 133 1/3% of the State's payment level to two person households eligible to receive assistance pursuant to P.L.1959, c.86 (C.44:10-1 et seq.); and

(ii) For households of three or more persons, the income standard shall be set at 133 1/3% of the State's payment level to similar size households eligible to receive assistance pursuant to P.L.1959, c.86 (C.44:10-1 et seq.).

(c) The following resource standard shall be used to determine medically needy eligibility:

(i) For one person households, the resource standard shall be 200% of the resource standard for recipients of Supplemental Security Income pursuant to 42 U.S.C.§1382(1)(B);

(ii) For two person households, the resource standard shall be 200% of the resource standard for recipients of Supplemental Security Income pursuant to 42 U.S.C.§1382(2)(B);

(iii) For households of three or more persons, the resource standard in subparagraph (c)(ii) above shall be increased by $100.00 for each additional person; and

(iv) The resource standards established in (i), (ii), and (iii) are subject to federal approval and the resource standard may be lower if required by the federal Department of Health and Human Services.

(d) Individuals whose income exceeds those established in subparagraph (b) of paragraph (8) of this subsection may become medically needy by incurring medical expenses as defined in 42 C.F.R.435.831(c) which will reduce their income to the applicable medically needy income established in subparagraph (b) of paragraph (8) of this subsection.

(e) A six-month period shall be used to determine whether an individual is medically needy.

(f) Eligibility determinations for the medically needy program shall be administered as follows:

(i) County welfare agencies are responsible for determining and certifying the eligibility of pregnant women and dependent children. The division shall reimburse county welfare agencies for 100% of the reasonable costs of administration which are not reimbursed by the federal government for the first 12 months of this program's operation. Thereafter, 75% of the administrative costs incurred by county welfare agencies which are not reimbursed by the federal government shall be reimbursed by the division;

(ii) The division is responsible for certifying the eligibility of individuals who are 65 years of age and older and individuals who are blind or disabled. The division may enter into contracts with county welfare agencies to determine certain aspects of eligibility. In such instances the division shall provide county

welfare agencies with all information the division may have available on the individual.

The division shall notify all eligible recipients of the Pharmaceutical Assistance to the Aged and Disabled program, P.L.1975, c.194 (C.30:4D-20 et seq.) on an annual basis of the medically needy program and the program's general requirements. The division shall take all reasonable administrative actions to ensure that Pharmaceutical Assistance to the Aged and Disabled recipients, who notify the division that they may be eligible for the program, have their applications processed expeditiously, at times and locations convenient to the recipients; and

(iii) The division is responsible for certifying incurred medical expenses for all eligible persons who attempt to qualify for the program pursuant to subparagraph (d) of paragraph (8) of this subsection;

(9) (a) Is a child who is at least one year of age and under six years of age; and

(b) Is a member of a family whose income does not exceed 133% of the poverty level and who meets the federal Medicaid eligibility requirements set forth in section 9401 of Pub.L.99-509 (42 U.S.C.§1396a);

(10) Is a pregnant woman who is determined by a provider to be presumptively eligible for medical assistance based on criteria established by the commissioner, pursuant to section 9407 of Pub.L.99-509 (42 U.S.C.§1396a(a));

(11) Is an individual 65 years of age and older, or an individual who is blind or disabled pursuant to section 301 of Pub.L.92-603 (42 U.S.C.§1382c), whose income does not exceed 100% of the poverty level, adjusted for family size, and whose resources do not exceed 100% of the resource standard used to determine medically needy eligibility pursuant to paragraph (8) of this subsection;

(12) Is a qualified disabled and working individual pursuant to section 6408 of Pub.L.101-239 (42 U.S.C.§1396d) whose income does not exceed 200% of the poverty level and whose resources do not exceed 200% of the resource standard used to determine eligibility under the Supplemental Security Income Program, P.L.1973, c.256 (C.44:7-85 et seq.);

(13) Is a pregnant woman or is a child who is under one year of age and is a member of a family whose income does not exceed 185% of the poverty level and who meets the federal Medicaid eligibility requirements set forth in section 9401 of Pub.L.99-509 (42 U.S.C.§1396a), except that a pregnant woman who is determined to be a qualified applicant shall, notwithstanding any change in the income of the family of which she is a member,

continue to be deemed a qualified applicant until the end of the 60-day period beginning on the last day of her pregnancy;

(14) Is a child born after September 30, 1983 who has attained six years of age but has not attained 19 years of age and is a member of a family whose income does not exceed 100% of the poverty level; or

(15) (a) Is a specified low-income medicare beneficiary pursuant to 42 U.S.C.§1396a(a)10(E)iii whose resources beginning January 1, 1993 do not exceed 200% of the resource standard used to determine eligibility under the Supplemental Security Income program, P.L.1973, c.256 (C.44:7-85 et seq.) and whose income beginning January 1, 1993 does not exceed 110% of the poverty level, and beginning January 1, 1995 does not exceed 120% of the poverty level.

(b) An individual who has, within 36 months, or within 60 months in the case of funds transferred into a trust, of applying to be a qualified applicant for Medicaid services in a nursing facility or a medical institution, or for home or community-based services under section 1915(c) of the federal Social Security Act (42 U.S.C.§1396n(c)), disposed of resources or income for less than fair market value shall be ineligible for assistance for nursing facility services, an equivalent level of services in a medical institution, or home or community-based services under section 1915(c) of the federal Social Security Act (42 U.S.C.§1396n(c)). The period of the ineligibility shall be the number of months resulting from dividing the uncompensated value of the transferred resources or income by the average monthly private payment rate for nursing facility services in the State as determined annually by the commissioner. In the case of multiple resource or income transfers, the resulting penalty periods shall be imposed sequentially. Application of this requirement shall be governed by 42 U.S.C. §1396p(c). In accordance with federal law, this provision is effective for all transfers of resources or income made on or after August 11, 1993. Notwithstanding the provisions of this subsection to the contrary, the State eligibility requirements concerning resource or income transfers shall not be more restrictive than those enacted pursuant to 42 U.S.C. §1396p(c).

(c) An individual seeking nursing facility services or home or community-based services and who has a community spouse shall be required to expend those resources which are not protected for the needs of the community spouse in accordance with section 1924(c) of the federal Social Security Act (42 U.S.C. §1396r-5(c)) on the costs of long-term care, burial arrangements, and any other expense deemed appropriate and authorized by the commissioner. An individual shall be ineligible for Medicaid services in

a nursing facility or for home or community-based services under section 1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) if the individual expends funds in violation of this subparagraph. The period of ineligibility shall be the number of months resulting from dividing the uncompensated value of transferred resources and income by the average monthly private payment rate for nursing facility services in the State as determined by the commissioner. The period of ineligibility shall begin with the month that the individual would otherwise be eligible for Medicaid coverage for nursing facility services or home or community-based services.

This subparagraph shall be operative only if all necessary approvals are received from the federal government including, but not limited to, approval of necessary State plan amendments and approval of any waivers.

j. "Recipient" means any qualified applicant receiving benefits under this act.

k. "Resident" means a person who is living in the State voluntarily with the intention of making his home here and not for a temporary purpose. Temporary absences from the State, with subsequent returns to the State or intent to return when the purposes of the absences have been accomplished, do not interrupt continuity of residence.

l. "State Medicaid Commission" means the Governor, the Commissioner of Human Services, the President of the Senate and the Speaker of the General Assembly, hereby constituted a commission to approve and direct the means and method for the payment of claims pursuant to this act.

m. "Third party" means any person, institution, corporation, insurance company, group health plan as defined in section 607(1) of the federal "Employee Retirement and Income Security Act of 1974," 29 U.S.C.§1167(1), service benefit plan, health maintenance organization, or other prepaid health plan, or public, private or governmental entity who is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the medical cost of injury, disease or disability of an applicant for or recipient of medical assistance payable under this act.

n. "Governmental peer grouping system" means a separate class of skilled nursing and intermediate care facilities administered by the State or county governments, established for the purpose of screening their reported costs and setting reimbursement rates under the Medicaid program that are reasonable and adequate to meet the costs that must be incurred by efficiently

and economically operated State or county skilled nursing and intermediate care facilities.

o. "Comprehensive maternity or pediatric care provider" means any person or public or private health care facility that is a provider and that is approved by the commissioner to provide comprehensive maternity care or comprehensive pediatric care as defined in subsection b. (18) and (19) of section 6 of P.L.1968, c.413 (C.30:4D-6).

p. "Poverty level" means the official poverty level based on family size established and adjusted under Section 673(2) of Subtitle B, the "Community Services Block Grant Act," of Pub.L.97-35 (42 U.S.C.§9902(2)).

2. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read as follows:

C.30:4D-6 Basic medical care and services.

6. a. Subject to the requirements of Title XIX of the federal Social Security Act, the limitations imposed by this act and by the rules and regulations promulgated pursuant thereto, the department shall provide medical assistance to qualified applicants, including authorized services within each of the following classifications:

(1) Inpatient hospital services;

(2) Outpatient hospital services;

(3) Other laboratory and X-ray services;

(4) (a) Skilled nursing or intermediate care facility services;

(b) Such early and periodic screening and diagnosis of individuals who are eligible under the program and are under age 21, to ascertain their physical or mental defects and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary of the federal Department of Health and Human Services and approved by the commissioner;

(5) Physician's services furnished in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere.

b. Subject to the limitations imposed by federal law, by this act, and by the rules and regulations promulgated pursuant thereto, the medical assistance program may be expanded to include authorized services within each of the following classifications:

(1) Medical care not included in subsection a.(5) above, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice, as defined by State law;

(2) Home health care services;

(3) Clinic services;

(4) Dental services;

(5) Physical therapy and related services;

(6) Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(7) Optometric services;

(8) Podiatric services;

(9) Chiropractic services;

(10) Psychological services;

(11) Inpatient psychiatric hospital services for individuals under 21 years of age, or under age 22 if they are receiving such services immediately before attaining age 21;

(12) Other diagnostic, screening, preventive, and rehabilitative services, and other remedial care;

(13) Inpatient hospital services, nursing facility services and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;

(14) Intermediate care facility services;

(15) Transportation services;

(16) Services in connection with the inpatient or outpatient treatment or care of drug abuse, when the treatment is prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center approved by the Department of Health pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.) and whose staff includes a medical director, and limited to those services eligible for federal financial participation under Title XIX of the federal Social Security Act;

(17) Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary of the federal Department of Health and Human Services, and approved by the commissioner;

(18) Comprehensive maternity care, which may include: the basic number of prenatal and postpartum visits recommended by the American College of Obstetrics and Gynecology; additional prenatal and postpartum visits that are medically necessary; necessary laboratory, nutritional assessment and counseling, health education, personal counseling, managed care, outreach and follow-up services; treatment of conditions which may complicate pregnancy; and physician or certified nurse-midwife delivery services;

(19) Comprehensive pediatric care, which may include: ambulatory, preventive and primary care health services. The preventive services shall include, at a minimum, the basic number of preventive visits recommended by the American Academy of Pediatrics;

(20) Services provided by a hospice which is participating in the Medicare program established pursuant to Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C.§1395 et seq.). Hospice services shall be provided subject to approval of the Secretary of the federal Department of Health and Human Services for federal reimbursement;

(21) Mammograms, subject to approval of the Secretary of the federal Department of Health and Human Services for federal reimbursement, including one baseline mammogram for women who are at least 35 but less than 40 years of age; one mammogram examination every two years or more frequently, if recommended by a physician, for women who are at least 40 but less than 50 years of age; and one mammogram examination every year for women age 50 and over.

c. Payments for the foregoing services, goods and supplies furnished pursuant to this act shall be made to the extent authorized by this act, the rules and regulations promulgated pursuant thereto and, where applicable, subject to the agreement of insurance provided for under this act. Said payments shall constitute payment in full to the provider on behalf of the recipient. Every provider making a claim for payment pursuant to this act shall certify in writing on the claim submitted that no additional amount will be charged to the recipient, his family, his representative or others on his behalf for the services, goods and supplies furnished pursuant to this act.

No provider whose claim for payment pursuant to this act has been denied because the services, goods or supplies were determined to be medically unnecessary shall seek reimbursement from the recipient, his family, his representative or others on his behalf for such services, goods and supplies provided pursuant to this act; provided, however, a provider may seek reimbursement from a recipient for services, goods or supplies not authorized by this act, if the recipient elected to receive the services, goods or supplies with the knowledge that they were not authorized.

d. Any individual eligible for medical assistance (including drugs) may obtain such assistance from any person qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability on a prepayment basis), who undertakes to provide him such services.

No copayment or other form of cost-sharing shall be imposed on any individual eligible for medical assistance, except as mandated by federal law as a condition of federal financial participation.

e. Anything in this act to the contrary notwithstanding, no payments for medical assistance shall be made under this act with respect to care or services for any individual who:

(1) Is an inmate of a public institution (except as a patient in a medical institution); provided, however, that an individual who is otherwise eligible may continue to receive services for the month in which he becomes an inmate, should the commissioner determine to expand the scope of Medicaid eligibility to include such an individual, subject to the limitations imposed by federal law and regulations, or

(2) Has not attained 65 years of age and who is a patient in an institution for mental diseases, or

(3) Is over 21 years of age and who is receiving inpatient psychiatric hospital services in a psychiatric facility; provided, however, that an individual who was receiving such services immediately prior to attaining age 21 may continue to receive such services until he reaches age 22. Nothing in this subsection shall prohibit the commissioner from extending medical assistance to all eligible persons receiving inpatient psychiatric services; provided that there is federal financial participation available.

f. A third party as defined in section 3 of P.L.1968, c.413 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in this or another state when determining the person's eligibility for enrollment or the provision of benefits by that third party. In addition, any provision in a contract of insurance, health benefits plan or other health care coverage document, will, trust agreement, court order or other instrument which reduces or excludes coverage or payment for health care-related goods and services to or for an individual because of that individual's actual or potential eligibility for or receipt of Medicaid benefits shall be null and void, and no payments shall be made under this act as a result of any such provision.

g. The following services shall be provided to eligible medically needy individuals as follows:

(1) Pregnant women shall be provided prenatal care and delivery services and postpartum care, including the services cited in subsection a.(1), (3) and (5) of this section and subsection b.(1)-(10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(2) Dependent children shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1), (2),

(3), (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(3) Individuals who are 65 years of age or older shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(4) Individuals who are blind or disabled shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(5) (a) Inpatient hospital services, subsection a.(1) of this section, shall only be provided to eligible medically needy individuals, other than pregnant women, if the federal Department of Health and Human Services discontinues the State's waiver to establish inpatient hospital reimbursement rates for the Medicare and Medicaid programs under the authority of section 601(c)(3) of the Social Security Act Amendments of 1983, Pub.L.98-21 (42 U.S.C.§1395ww(c)(5)). Inpatient hospital services may be extended to other eligible medically needy individuals if the federal Department of Health and Human Services directs that these services be included.

(b) Outpatient hospital services, subsection a.(2) of this section, shall only be provided to eligible medically needy individuals if the federal Department of Health and Human Services discontinues the State's waiver to establish outpatient hospital reimbursement rates for the Medicare and Medicaid programs under the authority of section 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21 (42 U.S.C.§1395ww(c)(5)). Outpatient hospital services may be extended to all or to certain medically needy individuals if the federal Department of Health and Human Services directs that these services be included. However, the use of outpatient hospital services shall be limited to clinic services and to emergency room services for injuries and significant acute medical conditions.

(c) The division shall monitor the use of inpatient and outpatient hospital services by medically needy persons.

h. In the case of a qualified disabled and working individual pursuant to section 6408 of Pub.L.101-239 (42 U.S.C.§1396d), the only medical assistance provided under this act shall be the payment of premiums for Medicare part A under 42 U.S.C.§1395i-2 and §1395r.

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i. In the case of a specified low-income medicare beneficiary pursuant to 42 U.S.C. §1396a(a)10(E)iii, the only medical assistance provided under this act shall be the payment of premiums for Medicare part B under 42 U.S.C.§1395r as provided for in 42 U.S.C.§1396d(p)(3)(A)(ii).

3. Section 3 of P.L.1987, c.283 (C.30:4D-6d) is amended to read as follows:

C.30:4D-6d Third party, certain; primary payer.

3. If a person who is eligible for continued Medicaid benefits pursuant to section 2 of this act obtains employment which provides health insurance coverage through a third party as defined in section 3 of P.L.1968, c.413 (C.30:4D-3), the third party shall be the primary payer and the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) shall be the secondary payer.

4. This act shall take effect immediately and shall be retroactive to April 1, 1995.

Approved December 22, 1995.

CHAPTER 293

AN ACT concerning equity capital sources for small capital businesses in New Jersey and supplementing Title 34 of the Revised Statutes.

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

C.34:1B-107 Short title.

1. This act shall be known and may be cited as the "New Capital Sources Partnership Act."

C.34:1B-108 Findings, declarations relative to small capital businesses; determinations.

2. The Legislature finds and declares that:

a. Businesses with a small capital investment are an essential part of the economy of the State in terms of products and services and as employers;

b. While New Jersey is a "capital rich" State, the connection of capital with those seeking equity investment has not readily taken place;

c. At various times in the past, efforts have been made to raise capital for the purpose of making equity investments in small capital businesses;

d. In its report issued in August of 1994, the Assembly Task Force on Business Retention, Expansion, and Export Opportunities specifically called for greater use of Small Business Investment Companies and identified the development of private sources of small business equity capital as a major need for the State. Then in October of 1994, the New Jersey Economic Development Authority (EDA) issued a Request for Proposal seeking a Fund Manager to serve as a General Partner for the development and implementation of a well diversified venture capital pool for investment in small business growth, encouraged use of Small Business Investment Companies and pledged an initial investment to this pool from the EDA of $2.5 million;

e. Efforts such as that currently initiated by the EDA with the commitment of government funds have had difficulty in the past in gaining private investor support and thus, for the most part, have not provided much assistance in the way of small business development and expansion.

The Legislature therefore determines that the establishment of a private partnership to act as a source of new private capital to be used as equity capital for small capital businesses is necessary, that the partnership initially should be formed with individuals who are willing to commit private capital for equity investments, and that the partnership should be enlarged by seeking commitments from financial institutions and other entities seeking to encourage the development and expansion of small capital businesses in this State, by cooperation with State entities engaged in similar efforts and, where appropriate, by gaining the commitment of State funds to match private investor funds.

C.34:1B-109 Definitions relative to small capital businesses.

3. As used in this act:

"Assembly task force" means the Assembly Task Force on Business Retention, Expansion, and Export Opportunities or its successor.

"Board" means the New Capital Sources Board established pursuant to section 4 of this act.

"Corporation" means the New Capital Sources Partnership established pursuant to section 5 of this act.

"Financial institution" means any State or federally chartered bank, savings bank, savings and loan association or other entity engaged primarily in lending or investing in this State.

"Member" means any person with a minimum investment in the corporation as established by the board.

C.34:1B-110 New Capital Sources Board established, powers.

4. a. There is established a New Capital Sources Board in, but not of, the Department of Commerce and Economic Development. The board shall be made up of eleven members: one shall be the Commissioner of Commerce and Economic Development, or his designee; one shall be the Chairman of the New Jersey Economic Development Authority, or his designee; three public members shall be appointed by the Governor; three public members shall be appointed by the President of the Senate; and three public members shall be appointed by the Speaker of the General Assembly, one of whom shall be designated as chair of the board. The appointment of the members shall take place within 45 days of the effective date of this act. The appointee of the Speaker of the General Assembly designated as chair of the board shall convene the board as soon as is practicable following the appointment of at least six public members to the board. The members appointed to this board shall consist of individuals with extensive experience in banking and venture capital financing.

b. The members of the board shall serve without compensation.

c. The board is authorized, empowered and directed to:

(1) Develop a form of organization and a plan of operation for the New Capital Sources Partnership consistent with the purposes of that partnership as set forth pursuant to section 5 of this act. In so doing the board shall consider, but not be limited to, the form of organization, plan of operation and experiences of the Massachusetts Business Development Corporation and the experience of the Michigan Strategic Fund in the formation of private financial institutions in the Commonwealth of Massachusetts and the State of Michigan, respectively, for business development purposes.

(2) Seek out and gain commitments from persons, natural and otherwise, to be initial investors in and incorporators of the New Capital Sources Partnership.

(3) Cooperate and coordinate its efforts at gaining a private source of equity capital for small business development in this State with the Department of Commerce and Economic Development, and any private sector nonprofit entity designated by the

department, which may include a nonprofit corporation organized to implement the recommendations of the New Jersey Economic Master Plan Commission established pursuant to Executive Order No. 1 issued by the Governor on January 18, 1994.

d. The Department of Commerce and Economic Development, the New Jersey Economic Development Authority and all other departments and agencies of the State which are engaged in economic development shall cooperate with the board to assist it in the accomplishment of its mission.

e. Within one year of the effective date of this act, the board shall provide the Governor and the Legislature with the results of its accomplishments under subsection c. of this section, including information on the incorporation of the New Capital Sources Partnership.

f. Nothing in this act shall prohibit public members of the board from being among those investors who form the New Capital Sources Partnership.

g. The board shall expire at the end of 13 months from the effective date of this act.

C.34:1B-111 New Capital Sources Partnership, purposes.

5. a. Within one year following the effective date of this act, the board shall incorporate or cause to be incorporated, as the case may be, a New Capital Sources Partnership.

b. The purpose of this partnership shall be to encourage and promote the development of small capital businesses in this State by forming a partnership with: individual investors and corporate investors, including financial institutions, to increase the amount of capital available for equity capital investments; small capital businesses in this State by the investment of equity capital in those businesses; Small Business Investment Companies to leverage federal dollars; educational institutions in this State to provide increased awareness of and opportunities for persons seeking to form or expand a small capital business, including training in all aspects of small business formation and management; and the State by providing expertise for and cooperation with the State in its efforts to encourage and support small capital business development.

6. This act shall take effect on the 60th day following enactment, but the appointment of members to the board pursuant to subsection a. of section 4 of this act may take place immediately.

Approved December 22, 1995.

CHAPTER 294

AN ACT concerning employees of certain school districts and 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:6-31.3 "New school district" defined.

1. As used in this act, "new school district" means a local school district, regional school district, a county vocational school district, a jointure commission, a county special services school district, or an educational services commission. A new school district shall not include a State-operated school district established by the State Board of Education pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.).

In the event that the school district of a municipality or districts in a group of municipalities are abolished and a subsequent district formed, the district subsequently formed shall constitute a new school district under this act and the previously existing school district or districts shall be considered the affected or constituent districts under this act.

C.18A:6-31.4 Terms, conditions of employment.

2. Whenever a new school district is created, the terms and conditions of employment, whether established through a collective bargaining agreement or past practice, of the largest constituent school district which is affected, replaced or displaced by, or forms part of the new school district, shall apply until a successor agreement is negotiated with the majority representative of the new school district. As used in this section, the term largest constituent school district means that school district which employs the largest number of teaching staff members.

In the event that there is an employee bargaining unit in a constituent school district with the next largest number of employees and with a majority representative of the unit, which is not so represented in the largest school district, the terms and conditions of employment for all employees holding positions in that unit in the new school district shall apply provided that the terms and conditions of employment shall only apply to the new school district's employees in that bargaining unit.

C.18A:6-31.5 Tenure, seniority rights.

3. Whenever a new school district is created, the tenure and seniority rights of all employees from the affected, constituent,

replaced or displaced districts which form or are a part of, or are affected, replaced or displaced by the new school district, except for employees who are superintendents, shall be recognized and preserved by the new school district and all periods of employment in any of the school districts shall count toward acquisition of tenure and seniority in the new school district. All statutory and contractual rights to tenure, seniority, accumulated sick leave, leave of absence, and pension of an employee, other than an employee who is a superintendent, which have been acquired through employment in any of the districts shall be recognized by the new school district.

C.18A:6-31.6 Filling vacancies, available positions.

4. Following consideration of the tenure and seniority rights of employees provided pursuant to section 3 of this act or pursuant to any other section of law, a new school district shall fill all vacancies and available positions from a pool of qualified employees prior to interviewing applicants or hiring new employees. The pool of qualified employees shall consist of all employees of the constituent, affected, displaced or replaced school districts who would otherwise be entitled to continued employment in that district in the following school year but are not entitled to continued employment in the new school district because of tenure or seniority status. During the school year in which the new district is established, a new school district shall not hire an employee for a particular position until all employees in the labor pool qualified to fill the position have been offered employment by the new school district.

C.18A:6-31.7 Employee rights, benefits preserved.

5. Nothing in this act shall be construed to limit, restrict, or reduce the rights or benefits of any employee provided under any other section of law or regulation.

6. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 295

AN ACT establishing the New Jersey Commission on Native American Affairs and supplementing Title 52 of the Revised Statutes.

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

C.52:16A-53 New Jersey Commission on Native American Affairs; membership.

1. There is established in the Department of State the New Jersey Commission on Native American 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 Native Americans who reside in New Jersey but are not members of the Nanticoke Lenni Lenape Indians, the Ramapough Mountain Indians, or the Powhatan Renape Nation.

C.52:16A-54 Terms; vacancies.

2. Each public member shall serve for a term of two years, except that of the members first appointed, four shall serve for a term of one year and four shall serve for a term of two years. Public members shall be eligible for reappointment and shall serve until their successors are appointed and qualified. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment was made but for the unexpired term only. Commission members shall serve without compensation but shall be entitled to reimbursement for all necessary expenses incurred in the performance of their duties.

C.52:16A-55 Election of chairperson; meetings.

3. The commission shall organize as soon as may be practicable after the appointment of its members and shall annually elect a chairperson from among its public members 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.

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 Native American communities;

b. develop programs and projects which further understanding of New Jersey's Native American history and culture;

c. promote increased cooperation among all Native American communities in the State;

d. serve as a Statewide reference and resource center to increase public knowledge of New Jersey's Native American heritage; and

e. act as a liaison among Native American communities, the State and federal governments, and educational, social and cultural institutions.

C.52:16A-57 Expenses incurred.

5. The commission may incur such traveling and other miscellaneous expenses, 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.

C.52:16A-58 State agency support.

6. The commission may 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 as may be available to it for that purpose.

C.52:16A-59 Annual report.

7. The commission shall submit an annual report on its activities to the Governor and the Legislature.

8. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 296

AN ACT concerning the enforcement of certain environmental laws and supplementing Title 13 of the Revised Statutes.

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

C.13:1D-125 Findings, declarations relative to enforcement of environmental laws.

1. The Legislature finds and declares that:

The Department of Environmental Protection has historically measured the success of its enforcement programs based upon the magnitude of penalties imposed, correlating higher penalties with greater success, and that this paradigm is predicated upon the belief that the threat or imposition of monetary sanctions is the sole economic incentive inducing compliance and the dominant force driving corporate compliance decisions and investments.

The economic dynamics of pollution control and waste management have substantially changed since the inception of environmental regulatory and enforcement programs; that considerable market forces now exist which substantially influence the economics of compliance; that the threat or imposition of monetary sanctions is no longer the dominant force driving corporate compliance decisions and investments; and that the enforcement programs administered by the Department of Environmental Protection should recognize these changes in the factors which influence compliance.

There are equally effective alternative methods to promote compliance with environmental laws, such as establishing grace (compliance) periods, which are especially well-suited for minor violations that have minimal, if any, effect upon public health, safety or natural resources, and that the Department of Environmental Protection affords grace (compliance) periods in certain regulatory programs for minor violations of environmental laws, but this policy is not consistently applied throughout all regulatory programs.

Expanding the use of grace (compliance) periods will promote compliance by allowing those members of the regulated community who are committed to working diligently and cooperatively toward compliance, to invest private capital in pollution control equipment and other measures which will yield long-term environmental benefits, instead of in costly litigation and the payment of punitive monetary sanctions.

Establishing a policy for the consistent application of grace (compliance) periods for minor violations is a proper exercise of

the Department of Environmental Protection's enforcement discretion and will enable the Department of Environmental Protection to more sharply focus limited public resources on serious violations of environmental law.

Establishing and employing grace (compliance) periods for minor violations will ensure the administration of an effective, consistent, sensible and fair enforcement program by the Department of Environmental Protection, and promote the health and safety of the public and the protection of natural resources.

Persons responsible for minor violations of environmental laws should be afforded a grace (compliance) period, and if the person responsible for the violation achieves compliance within the grace period, the Department of Environmental Protection should refrain from imposing penalties.

The economic dynamics of compliance, in combination with an evolving environmentally-sensitive corporate ethic, have resulted in the initiation of environmental audits by regulated entities and the consequent discovery of violations of environmental laws.

Environmental enforcement policies should promote and encourage the initiation of environmental audits, the diligent remediation of violations so discovered and the immediate and voluntary disclosure of such violations to the Department of Environmental Protection.

The Department of Environmental Protection should refrain from imposing monetary sanctions for violations immediately and voluntarily disclosed, provided certain conditions are met.

C.13:1D-126 Definitions.

2. As used in this act:

"Department" means the Department of Environmental Protection.

"Environmental law" means the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et seq.); the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.); the "Worker and Community Right To Know Act," P.L.1983, c.315 (C.34:5A-1 et al.); the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); the "Noise Control Act of 1971,"

P.L.1971, c.418 (C.13:1G-1 et seq.); the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1 et seq.); the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); R.S.12:5-1 et seq.; the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.); any rule or regulation promulgated thereunder; and any permit issued pursuant thereto. It shall also include any ordinance adopted by a local government agency to implement or effectuate the purposes or objectives of an environmental law.

"Facility" means the building, equipment and contiguous area at a single location used for the conduct of business, and which is regulated pursuant to an environmental law.

"Local government agency" means a political subdivision of the State or any instrumentality thereof, including, but not limited to, a municipality, county, local board of health, county board of health, regional health commission, improvement authority, utility authority or sewerage authority authorized by law to enforce an environmental law or adopt ordinances implementing or effectuating the purposes or objectives of an environmental law.

"Minor violation" means any violation which the department, pursuant to section 5 of this act, has designated as a minor violation.

"Penalty" means a civil penalty imposed or civil administrative penalty assessed for a violation of any environmental law or any rule or regulation adopted pursuant thereto or any permit issued thereunder.

"Person" means any individual, corporation, company, partnership, firm, association, political subdivision of this State or any State or interstate agency.

C.13:1D-127 Minor violations.

3. a. Upon identification of a violation of an environmental law which, pursuant to section 5 of this act, is designated as a minor violation, the department or a local government agency, as the case may be, shall issue an order, notice of violation, or other enforcement document to the person responsible for the minor violation which: (1) identifies the condition or activity that constitutes the violation and the specific statute, rule or regulation, or permit condition violated; and (2) notifies the person responsible for the violation that a penalty may be imposed unless the activity or condition constituting the minor violation is corrected and compliance

is achieved within the period of time specified in the order, notice of violation, or other enforcement document, as the case may be.

b. In each order, notice of violation, or other enforcement document issued pursuant to subsection a. of this section, the department or local government agency, as the case may be, shall provide the person responsible for the minor violation a period of time to correct that violation and achieve compliance. The department shall promulgate rules and regulations establishing the period of time within which each type or category of minor violation shall be corrected and compliance achieved. The periods of time established for correction and compliance pursuant to this subsection shall be no less than 30 days or more than 90 days, based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance; provided, however, the department may establish a special type or category of minor violation which for public health and safety reasons shall be corrected and compliance achieved in a period of less than 30 days. The department or local government agency, as the case may be, may extend for an additional period of time not to exceed 90 days, in its discretion, the period of time set forth in the order, notice of violation, or other enforcement document within which the minor violation is to be corrected and compliance achieved. If compliance is not achieved during that period due to a lack of required action by the department or a local government agency, then the compliance period shall be tolled until the department or local government agency takes such required action.

c. If a person responsible for a minor violation corrects that violation and achieves compliance within the period of time specified in the order, notice of violation, or other enforcement document issued pursuant to subsection a. of this section, the department or the local government agency, as the case may be, shall not impose a penalty for that violation. The department or local government agency, as the case may be, may require the person responsible for correcting a minor violation or achieving compliance to submit a written certification, or other documentation, to verify that compliance has been achieved.

d. Nothing in this act shall be construed to limit the authority of the department or a local government agency to seek damages or injunctive relief, to initiate or proceed with a criminal investigation or prosecution, or to obtain any other appropriate relief that may be available.

C.13:1D-128 Failure to correct violation.

4. If the person responsible for the minor violation fails to correct or achieve compliance within the period of time specified in the order, notice of violation, or other enforcement document, the department or local government agency, as the case may be, may impose at its discretion a penalty which is retroactive to the date on which the order, notice of violation, or other enforcement document was first issued to the person responsible.

C.13:1D-129 Rules, regulations; violation designations.

5. a. The department shall promulgate rules and regulations designating specific types or categories of violations within each regulatory and enforcement program of each environmental law as minor violations and non-minor violations. In designating minor violations, the department shall utilize the criteria set forth in this section. All types or categories of violations not designated as minor violations shall be designated as non-minor violations.

b. A violation shall be designated by the department as a minor violation if:

(1) The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

(2) The violation poses minimal risk to the public health, safety and natural resources;

(3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;

(4) The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the department or local government agency;

(5) (a) The person responsible for the violation has not been identified in a previous enforcement action by the department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

(b) in the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

(c) in the case of a violation of the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1

et seq.); R.S.12:5-1 et seq.; the "Flood Hazard Area Control Act,"P.L.1962, c.19 (C.58:16A-50 et seq.) or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period; or

(d) in the case of any violation, the person responsible for the violation has not been identified by the department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

(6) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the period of time prescribed by the department pursuant to subsection b. of section 3 of P.L.1995, c.296 (C.13:1D-127).

c. Any violation subject to the mandatory assessment of civil administrative penalties pursuant to section 6 of P.L.1990, c.28 (C.58:10A-10.1) shall not be designated as a minor violation pursuant to this act.

C.13:1D-130 Voluntary disclosure; nonimposition of penalty.

6. Whenever a person responsible for a minor violation designated as such pursuant to section 5 of this act of an environmental law voluntarily discloses to the department or local government agency the existence of that violation, the department or local government agency, as the case may be, shall not impose a civil or civil administrative penalty for the violation; provided the person responsible for the violation fully discloses all relevant circumstances surrounding the violation within 30 days of its discovery, immediately ceases any continuation of the violation, and promptly remedies the violation and achieves compliance, in accordance with the timeframes established pursuant to section 3 of this act.

C.13:1D-131 Violation procedures prior to adopted rules, regulations.

7. Prior to the adoption of the rules and regulations prescribed in subsection a. of section 5 of P.L.1995, c.296 (C.13:1D-129), the department or a local governmental agency, upon the identification of a violation of an environmental law and upon a case-by-case basis, may utilize the criteria set forth in section 5 of P.L.1995, c.296 (C.13:1D-129) to designate that violation as a minor violation and determine that the person responsible for that

minor violation is eligible for the relief available under this act. In any such case, the department or local government agency, as the case may be, shall specify the time period which shall not exceed 180 days within which the responsible person shall correct the violation and achieve compliance. If compliance is achieved within that specified period, the department or local government agency shall not impose a penalty for the violation. If compliance is not achieved during that period due to a lack of required action by the department or a local government agency, then the compliance period shall be tolled until the department or local government agency takes such required action.

C.13:1D-132 Report, contents; recommendations.

8. The department shall annually submit to the Governor and the Legislature a report that provides the following information on each regulatory and enforcement program administered pursuant to an environmental law:

a. The number of facilities regulated;

b. The number of inspections performed;

c. The number of minor violations identified, and the number of facilities responsible therefor;

d. The number of minor violations corrected during a grace period, and the number of facilities responsible therefor;

e. The number of minor violations not corrected during a grace period, and the number of facilities responsible therefor;

f. The number of enforcement actions assessing a penalty initiated for one or more minor violations not corrected during a grace period;

g. The number of non-minor violations identified, and the number of facilities responsible therefor; and

h. The number of enforcement actions assessing a penalty initiated for one or more non-minor violations.

Along with the report, the department may submit any recommendations it may have for any legislation it determines is necessary.

C.13:1D-133 Rules, regulations; submission to Legislature.

9. Within 180 days of the effective date of this act, the department, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act. Not less than 60 days prior to the proposed adoption of any rules or regulations proposed by the department pursuant to this act, the department shall submit such proposed rules and regulations to the chairperson of the Senate Legislative Oversight

Committee, or its successor, and the chairperson of the Assembly Regulatory Oversight Committee, or its successor. The department shall provide for a comment period of no less than 60 days prior to the adoption of the proposed rules or regulations, during which at least one public hearing shall be held for the purpose of obtaining comments on the proposed rules or regulations.

10. This act shall take effect immediately; provided, however, the relief afforded under this act shall be applicable only to violations identified on or after the effective date and further provided, that for the purposes of paragraphs (4) and (5) of subsection b. of section 5 of this act, the department shall not consider violations occurring prior to the effective date.

Approved December 22, 1995.

CHAPTER 297

AN ACT concerning the restoration of DeVoe Lake Dam in the County of Middlesex and and making an appropriation therefor.

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

1. There is appropriated to the Department of Environmental Protection from the "1992 Dam Restoration and Clean Water Trust Fund" established pursuant to section 26 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $500,000 to provide a loan pursuant to section 11 of that act to the Borough of Spotswood, County of Middlesex, for the restoration of DeVoe Lake Dam.

2. Consistent with the provisions of section 2 of P.L.1993, c.356, concerning the use of unexpended funds, any unexpended funds from the sum appropriated by P.L.1993, c.356 from the "Natural Resources Fund," created pursuant to the "Natural Resources Bond Act of 1980," P.L.1980, c.70, for dam restoration for State projects and for matching grants to local governments shall be used to fund the restoration of the DeVoe Lake Dam. The

department shall reimburse the Borough of Spotswood for any funds expended by the borough for the dam restoration pursuant to a grant or loan agreement.

3. The provisions of this act shall supercede any provisions of any law that are in conflict with the provisions of this act.

4. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 298

AN ACT concerning small employer insurance plans, amending and supplementing P.L.1992, c.162 and repealing parts of statutory law.

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

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

C.17B:27A-17. Definitions relative to small employer insurance plans.

1. As used in this act:

"Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 9 of P.L.1992, c.162 (C.17B:27A-25), based upon examination, including a review of the appropriate records and actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefits plans.

"Anticipated loss ratio" means the ratio of the present value of the expected benefits, not including dividends, to the present value of the expected premiums, not reduced by dividends, over the entire period for which rates are computed to provide coverage. For purposes of this ratio, the present values must incorporate realistic rates of interest which are determined before federal taxes but after investment expenses.

"Board" means the board of directors of the program.

"Carrier" means any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in New Jersey or any health maintenance organization located in New Jersey that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.

"Commissioner" means the Commissioner of Insurance.

"Community rating" means a rating methodology in which the premium for all persons covered by a policy or contract form is the same based upon the experience of the entire pool of risks covered by that policy or contract form without regard to age, gender, health status, residence or occupation.

"Department" means the Department of Insurance.

"Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefits plan covering the employee.

"Eligible employee" means a full-time employee who works a normal work week of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefits plan of a small employer, but does not include employees who work less than 25 hours a week, work on a temporary or substitute basis or are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement.

"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.

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19). For

purposes of this act, "health benefits plan" excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other supplemental limited benefit insurance coverage, automobile medical payment insurance, personal injury protection coverage issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) and stop loss or excess risk insurance.

"Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefits plan of a small employer following the initial minimum 30-day enrollment period provided under the terms of the health benefits plan. An eligible employee or dependent shall not be considered a late enrollee if the individual: a. was covered under another employer's health benefits plan at the time he was eligible to enroll and stated at the time of the initial enrollment that coverage under that other employer's health benefits plan was the reason for declining enrollment; b. has lost coverage under that other employer's health benefits plan as a result of termination of employment, the termination of the other plan's coverage, death of a spouse, or divorce; and c. requests enrollment within 90 days after termination of coverage provided under another employer's health benefits plan. An eligible employee or dependent also shall not be considered a late enrollee if the individual is employed by an employer which offers multiple health benefits plans and the individual elects a different plan during an open enrollment period; or if a court of competent jurisdiction has ordered coverage to be provided for a spouse or minor child under a covered employee's health benefits plan and request for enrollment is made within 30 days after issuance of that court order.

"Member" means all carriers issuing health benefits plans in this State on or after the effective date of this act.

"Multiple employer arrangement" means an arrangement established or maintained to provide health benefits to employees and their dependents of two or more employers, under an insured plan purchased from a carrier in which the carrier assumes all or a substantial portion of the risk, as determined by the commissioner, and shall include, but is not limited to, a multiple employer welfare arrangement, or MEWA, multiple employer trust or other form of benefit trust.

"Plan of operation" means the plan of operation of the program including articles, bylaws and operating rules approved pursuant to section 14 of P.L.1992, c.162 (C.17B:27A-30).

"Preexisting condition provision" means a policy or contract provision that excludes coverage under that policy or contract for charges or expenses incurred during a specified period following the insured's effective date of coverage, for a condition that, during a specified period 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 pregnancy existing on the effective date of coverage.

"Program" means the New Jersey Small Employer Health Benefits Program established pursuant to section 12 of P.L.1992, c.162 (C.17B:27A-28).

"Qualifying previous coverage" means benefits or coverage provided under:

a. Medicare or Medicaid or any other federally funded health benefits program;

b. a group health insurance policy or contract, including coverage by an insurance company, a health, hospital or medical service corporation, or a health maintenance organization, or an employer-based, self-funded or other health benefit arrangement; or

c. an individual health insurance policy or contract, including coverage by an insurance company, a health, hospital or medical service corporation, or a health maintenance organization.

Qualifying previous coverage shall not include the following policies, contracts or arrangements, whether issued on an individual or group basis: specified disease only, accident only, credit, disability, long-term care, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other supplemental limited benefit coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.).

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed at least two but no more than 49 eligible employees, the majority of whom are employed within the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer. Subsequent to the issuance of a health benefits plan to a small employer pursuant to the provisions of this act, and for

the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this act which apply to a small employer shall continue to apply until the anniversary date of the health benefits plan next following the date the employer no longer meets the definition of a small employer.

"Small employer carrier" means any carrier that offers health benefits plans covering eligible employees of one or more small employers.

"Small employer health benefits plan" means a health benefits plan for small employers approved by the commissioner pursuant to section 17 of P.L.1992, c.162 (C.17B:27A-33).

"Stop loss" or "excess risk insurance" means an insurance policy designed to reimburse a self-funded arrangement of one or more small employers for catastrophic, excess or unexpected expenses, wherein neither the employees or other individuals are third party beneficiaries under the insurance policy. In order to be considered stop loss or excess risk insurance for the purposes of P.L.1992, c.162 (C.17B:27A-17 et seq.), the policy shall establish a per person attachment point or retention or aggregate attachment point or retention, or both, which meet the following requirements:

a. If the policy establishes a per person attachment point or retention, that specific attachment point or retention shall not be less than $25,000 per covered person per plan year; and

b. If the policy establishes an aggregate attachment point or retention, that aggregate attachment point or retention shall not be less than 125% of expected claims per plan year.

"Supplemental limited benefit insurance" means insurance that is provided in addition to a health benefits plan on an indemnity non-expense incurred basis.

2. Section 6 of P.L.1992, c.162 (C.17B:27A-22) is amended to read as follows:

C.17B:27A-22 Preexisting condition provisions.

6. a. No health benefits plan subject to this act shall include any preexisting condition provision, provided that, a preexisting condition provision may apply to a late enrollee or to any group of two to five persons if such provision excludes coverage for a period of no more than 180 days following the effective date of coverage of such enrollee, and relates only to conditions manifesting themselves during the six months immediately preceding the effective date of coverage of such enrollee 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 during the six months immediately preceding the effective date of coverage, or as to a pregnancy existing on the effective date of coverage; provided that, if 10 or more late enrollees request enrollment during any 30-day enrollment period, then no preexisting condition provision shall apply to any such enrollee.

b. In determining whether a preexisting condition provision applies to an eligible employee or dependent, all health benefits plans shall credit the time that person was covered under any qualifying previous coverage if the previous coverage was continuous to a date not more than 90 days prior to the effective date of the new coverage, exclusive of any applicable waiting period under such plan.

3. 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. 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.

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

C.17B:27A-25. Community rating required; other plan requirements.

9. a. (1) Beginning on the third 12-month anniversary date of any policy or contract issued in 1994, no small employer health benefits plan shall be issued in this State unless the plan is community rated.

(2) Beginning January 1, 1994 and upon the first 12-month anniversary date thereafter of the policy or contract, the premium rate charged by a carrier to the highest rated small group purchasing a small employer health benefits plan issued pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) shall not be greater than 300% of the premium rate charged to 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.

(3) Beginning on the second 12-month anniversary after the date established in paragraph (2) of this subsection of the policy or contract, the premium rate charged by a carrier to the highest rated small group purchasing a small employer health benefits plan issued pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) 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.

(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 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 a policy form shall not be less than 75% of the premium therefor. 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 each of the five standard policy forms offered by the carrier pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19), at least 75% of the aggregate premiums collected for the policy form 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 each such policy form for the previous calendar year. In each case where the loss ratio for a policy 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 that policy form 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

policy form in the previous calendar year. The dividend or credit shall be issued to each policy which was in effect as of March 30th of the applicable year and remains in effect as of the date the dividend or credit is issued. 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, 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.

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. Except as provided in subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19), a policy or contract covering two or more employees of a small employer issued by a carrier prior to January 1, 1994 shall remain in effect until the first 12-month anniversary date after February 28, 1994 of that policy or contract, but at least 60 days before the first 12-month anniversary date thereof the carrier shall be required to offer the small employer a policy or contract pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19).

5. Section 11 of P.L.1992, c.162 (C.17B:27A-27) is amended to read as follows:

C.17B:27A-27 Continued coverage for certain terminated employees.

11. a. Every policy or contract issued to a small employer in this State, including, but not limited to, policies or contracts which are subject to this act and which are delivered, issued, renewed, or continued on or after January 1, 1994, shall offer continued coverage under the plan to any employee whose employment was terminated for a reason other than for cause and to any employee covered by such plan whose hours of employment were reduced to less than 25 subsequent to the effective date of coverage for that employee. The employee shall make a written election for continued coverage within 30 days of a qualifying event. For the purposes of this section, "qualifying event" shall mean the date of termination of employment, or the date on which

a reduction in an employee's hours of employment becomes effective. For the purposes of this section, the date on which a health benefits plan is continued shall be the anniversary date of the issuance of the plan.

b. Coverage continued pursuant to subsection a. of this section shall consist of coverage which is identical to the coverage provided under the policy or contract to similarly situated beneficiaries whose coverage has not been terminated or hours of employment reduced. If coverage is modified under the policy or contract for any group of similarly situated beneficiaries, this coverage shall also be modified in the same manner for persons who are qualified beneficiaries entitled pursuant to subsection a. of this section to continued coverage. Continuation of coverage may not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

c. The health benefits plan may require payment of a premium by the employee for any period of continuation coverage as provided for in this section, except that the premium shall not exceed 102% of the applicable premium paid for similarly situated beneficiaries under the health benefits plan for a specified period, and may, at the election of the payor, be made in monthly installments. No premium payment shall be due before the 30th day after the day on which the covered employee made the initial election for continued coverage.

d. Coverage continued pursuant to this section shall continue until the earlier of the following:

(1) The date upon which the employer under whose health benefits plan coverage is continued ceases to provide any health benefits plan to any employee or other qualified beneficiary;

(2) The date on which the continued coverage ceases under the health benefits plan by reason of a failure to make timely payment of any premium required under the plan by the former employee having the continued coverage. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within such longer period as may be provided for by the policy or contract; or

(3) The date after the date of election on which the qualified beneficiary first becomes:

(a) Covered under any other health benefits plan, as an employee or otherwise, which does not contain a provision which limits or excludes coverage with respect to any preexisting condition of a covered employee or any spouse or dependent who is

included under the coverage provided the covered employee, for such period of the limitation or exclusion; or

(b) Eligible for benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. §1395 et seq.).

e. Notice shall be provided to employees in the certificate of coverage prepared for employees by the carrier on or about the commencement of coverage and by the small employer at the time of the qualifying event as to their continuation rights under the plan. A qualified beneficiary may elect continuation coverage offered pursuant to this section no later than 30 days after the qualifying event. For the purposes of this section, "qualified beneficiary" means any person covered under a small employer group policy.

f. The provisions of this section shall not apply to any person who is a qualified beneficiary for the purposes of continuation of coverage as provided in accordance with section 3011(a) of Title III of Pub.L.100-647 (26 U.S.C. §4980B et al.).

g. In no event shall any continuation of coverage provided for under this section exceed 12 months from the qualifying event.

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

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

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

(1) Three carriers whose principal health insurance business is in the small employer market;

(2) One carrier whose principal health insurance business is in the large employer market;

(3) Until December 31, 1999, a health, hospital or medical service corporation or a domestic mutual insurer which converted

from a health service corporation in accordance with the provisions of sections 2 through 4 of P.L.1995, c.196 (C.17:48E-46 through C.17:48E-48). After that date, a health, hospital or medical service corporation or a domestic mutual insurer which, either directly or through a subsidiary health maintenance organization, is primarily engaged in the business of issuing health benefits plans;

(4) Two health maintenance organizations; and

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

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

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

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

The board shall hold an election for the two members added pursuant to P.L.1995, c.298 within 90 days of the date of enactment of that act. Initially, one of the two new members shall serve for a term of one year and one of the two new members shall serve for a term of two years. Thereafter, the new members shall serve for a term of three years. The terms of the risk-assuming carrier and reinsuring carrier shall terminate upon the election of the two new members added pursuant to P.L.1995, c.298, notwithstanding the provisions of this section to the contrary.

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

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

One representative of organized labor;

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

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

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

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

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

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

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

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

7. Section 15 of P.L.1992, c.162 (C.17B:27A-31) is amended to read as follows:

C.17B:27A-31 Contents of plan of operation.

15. The plan of operation shall constitute a public record and shall include, but not be limited to, the following:

a. A method of handling and accounting for assets and moneys of the program and an annual fiscal reporting to the commissioner;

b. A means of providing for the filling of vacancies on the board, subject to the approval of the commissioner; and

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

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

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

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

g. Any additional matters which are appropriate to effectuate the provisions of this act.

8. Section 16 of P.L.1992, c.162 (C.17B:27A-32) is amended to read as follows:

C.17B:27A-32 Authority of board.

16. The board shall have the authority to:

a. Enter into contracts as are necessary or proper to carry out the provisions and purposes of this act;

b. Sue or be sued, including taking any legal actions as may be necessary for recovery of any assessments due to the program or to avoid paying any improper claims;

c. Establish rules, conditions, and procedures pertaining to the assessment of members by the program;

d. Assess members in accordance with the provisions of this act, including such interim assessments as may be reasonable and necessary for organizational and reasonable operating expenses. Such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year;

e. Appoint from among its members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in

the operation of the program, policy and other contract design, and any other function within the authority of the program; and

f. Contract for an independent actuary or any other professional services the board deems necessary to carry out its duties under P.L.1992, c.162 (C.17B:27A-17 et seq.).

9. Section 25 of P.L.1992, c.162 (C.17B:27A-41) is amended to read as follows:

C.17B:27A-41 Violations, penalty.

25. Any carrier which violates this act shall be subject to a penalty assessment, as determined by the commissioner.

10. The title of P.L.1992, c.162 is amended to read as follows:

Title amended.

An act requiring certain health insurers, service corporations and health maintenance organizations to offer standardized health benefits programs to small groups.

C.17B:27A-29.1 Immunity from liability for board.

11. A member of the board and an employee of the board shall not be liable in an action for damages to any person for any action taken or recommendation made by him within the scope of his functions as a member or employee, if the action or recommendation was taken or made without malice. The members of the board shall be indemnified and their defense of any action provided for in the same manner and to the same extent as employees of the State under the "New Jersey Tort Claims Act," P.L.1972, c.45 (C.59:1-1 et seq.) on account of acts or omissions in the scope of their employment.

C.17B:27A-29.2 Rules, regulations for voluntary risk pooling arrangement.

12. The board may, if necessary, adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to establish a voluntary risk pooling arrangement for program members.

If the board determines that such an arrangement is necessary, it shall submit the proposed rules and regulations to the Legislature for review on a day that the Legislature is in session and to the commissioner for his approval. If the Legislature does not take action in 30 days to amend or otherwise change the rules and regulations, the rules and regulations shall be effective upon approval by the commissioner or upon such later date as the board determines.

Repealer.

13. Sections 18 through 24, inclusive, and section 26 of P.L.1992, c.162 (C.17B:27A-34 to 40 and 42) and section 18 of P.L.1993, c.162 (C.17B:27A-52) are repealed.

14. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 299

AN ACT concerning voluntary contributions through gross income tax returns to support the establishment, operation and maintenance of the Battleship New Jersey Memorial, 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:9-25.9 Battleship New Jersey Memorial Fund, tax refund checkoff.

1. 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 Battleship New Jersey Memorial Fund established pursuant to this act. The Director of the Division of Taxation shall provide each taxpayer with the opportunity to indicate the taxpayer's preference on the tax return to contribute to the fund in substantially the following way:

"Battleship New Jersey Memorial Fund: I wish to contribute $5☐, $10☐, other amount $☐ to this fund."

C.54A:9-25.10 Battleship New Jersey Memorial Fund, established.

2. There is established in the Department of the Treasury a special fund to be known as the Battleship New Jersey Memorial Fund. The State Treasurer shall deposit into the fund net contributions collected pursuant to this act. All moneys deposited in the Battleship New Jersey Memorial Fund shall be annually appropriated:

a. to the U.S.S. New Jersey Battleship Commission to support the acquisition and relocation of the U.S.S. New Jersey Battleship to New Jersey; and

b. after the relocation of the battleship to a permanent berth in New Jersey, to the Battleship New Jersey Foundation to support the maintenance and operation of the U.S.S. New Jersey as a memorial and museum. The Chair of the U.S.S. New Jersey Battleship Commission shall provide written notification to the State Treasurer when the U.S.S. New Jersey has been relocated and dedicated in New Jersey as a permanent memorial and museum.

C.54A:9-25.11 Cost incurred, deducted from receipts.

3. Any costs incurred by the Division of Taxation for collection or administration attributable to this act may be deducted from receipts collected pursuant to section 1 of this act, as determined by the Director of the Division of Budget and Accounting in the Department of the Treasury.

4. This act shall take effect immediately, but shall remain inoperative until January 1 next following enactment.

Approved December 22, 1995.

CHAPTER 300

AN ACT appropriating $3,988,000 from the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, for the purpose of establishing and constructing research facilities for advanced technology centers.

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

1. There is appropriated to the New Jersey Commission on Science and Technology, established pursuant to P.L.1985, c.102 (C.52:9X-1 et seq.), from the "Jobs, Education and Competitiveness Fund" created pursuant to the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, the sum of $3,988,000 for the purpose of establishing and constructing advanced technology centers. This sum shall be allocated as follows:

a. Establishment, construction and equipping of an aquaculture demonstration facility, to be located in Lower Township, Cape May County.....$2,000,000.

b. Acquisition and development of a high technology facility to be located in North Brunswick Township, Middlesex County.....$1,988,000.

2. The expenditures of the sums appropriated by this act are subject to the provisions and conditions of P.L.1988, c.78.

3. This act shall take effect immediately.

Approved December 22, 1995.

CHAPTER 301

AN ACT concerning litter abatement and the taxation of litter-generating products, and amending P.L.1985, c.533 and P.L.1986, c.187.

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

1. Section 6 of P.L.1985, c.533 (C.13:1E-99.1) is amended to read as follows:

C.13:1E-99.1 Tax on sales of litter-generating products.

6. a. There is levied upon each person engaged in business in the State as a manufacturer, wholesaler, or distributor of litter-generating products a tax of 3/100 of 1% (.0003) on sales of those products within the State, and each person engaged in business in the State as a retailer of litter-generating products a tax of 2.25/100 of 1% (.000225) on sales of those products within the State, except any retailer with less than $250,000.00 in annual retail sales of litter-generating products is exempt from this tax. A sale by a wholesaler or distributor to another wholesaler or distributor, a sale by a company to another company owned wholly by the same individuals or companies, or a sale by a wholesaler or distributor owned cooperatively by retailers to those retailers is not subject to tax under this act. For the purposes of this act, "retailer" includes restaurants one of the principal activities of which consists of selling for consumption off the premises of the restaurant a meal or food prepared and ready to be eaten.

The tax on the sale of litter-generating products imposed by this subsection shall expire December 31, 2000. However, this expiration shall not affect any obligation, lien or duty to pay taxes which may be due with respect to the imposition of any levy, or interest or penalties which may accrue by virtue of any assessment, which may be made with respect to taxes levied for any taxable year or part of a taxable year, prior to January 1, 2001, nor shall this expiration affect the legal authority to assess and collect the taxes which may be due and payable under section 6 of P.L.1985, c.533 (C.13:1E-99.1), as the case may be, together with such interest and penalties as would accrue thereon under section 6 of P.L.1985, c.533 (C.13:1E-99.1), nor shall this expiration invalidate any assessment or affect any proceeding for the enforcement thereof.

b. Every person subject to the tax imposed pursuant to this act shall file with the director a certificate of registration on a form prescribed by the director. Any person who is registered under any law administered by the division or who is subject to and files returns under any of these laws shall not be required to comply with the provisions of this subsection.

c. Every person subject to this tax shall, on or before March 15 of each year, prepare and file a return, under oath, for the preceding calendar year with the director on forms and containing any information as the director shall prescribe. The return shall indicate the dollar value of the sales within the State of litter-generating products and at the same time the person shall pay the full amount of tax due.

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 whatever information may be available. Notice of the determination shall be given to the taxpayer liable for the payment of the tax. The determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after receiving notice of the determination, shall apply to the director for a hearing, or unless the director on his own motion shall redetermine the same. After the 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 tax 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 director determines that the failure to comply with any provision of this section

was excusable under the circumstances, he may remit any part of the penalty as shall be appropriate under the 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 by this section, the director may:

(1) Delegate to any officer or employee of his division those powers and duties as he may deem necessary to carry out efficiently the provisions of this section, and the person or persons to whom the powers have been delegated shall possess and may exercise all of the powers and perform all of the duties delegated by the director;

(2) Prescribe and distribute all necessary forms for the implementation of this section; and

(3) Adopt any rules and regulations necessary for the implementation of this act.

h. The tax imposed by this section shall be governed in all respects by the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., unless otherwise provided by a specific provision of this section.

2. Section 7 of P.L.1985, c.533 (C.13:1E-99.2) is amended to read as follows:

C.13:1E-99.2 Clean Communities Account.

7. The Clean Communities Account is established as a nonlapsing, revolving fund in the Department of the Treasury to carry out the purposes of this act. The Clean Communities Account shall be administered by the Department of Environmental Protection and credited, in addition to any appropriations made thereto, with all taxes and penalties levied or imposed pursuant to sections 6 and 10 of P.L.1985, c.533 (C.13:1E-99.1 and 13:1E-99.5), and any sums received as voluntary contributions from private sources. Interest received on moneys in the account shall be credited to the account. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, which shall take the form of a discrete legislative appropriations act and shall not be included within the annual appropriations act, all available moneys in the Clean Communities Account shall be appropriated annually solely for the following purposes and no others:

a. 5% of the estimated annual balance of the account shall be used for a State program of litter pickup and removal, of public education and information relating to litter abatement and of

enforcement of litter-related laws and ordinances in State owned places and areas that are accessible to the public;

b. 50% of the estimated annual balance of the account shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the housing units of a qualifying municipality bear to the total housing units in the State. Total housing units shall be determined using the most recent federal decennial population estimates for New Jersey and its municipalities, filed in the office of the Secretary of State;

c. 30% of the estimated annual balance of the account shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the municipal road mileage of a qualifying municipality bears to the total municipal road mileage within the State. For the purposes of this subsection, "municipal road mileage" means that road mileage under the jurisdiction of municipalities, as determined by the Department of Transportation;

d. 10% of the estimated annual balance of the account shall be distributed as State aid to eligible counties for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each county shall be solely calculated based on the proportion which the county road mileage of an eligible county bears to the total county road mileage within the State. For the purposes of this subsection, "county road mileage" means that road mileage under the jurisdiction of counties, as determined by the Department of Transportation;

e. The Department of Environmental Protection shall develop model municipal and county litter control programs. A model county or municipal litter control program shall provide that funds distributed from the Clean Communities Account to a county or municipality shall be used solely to supplement existing

litter pickup and removal activities, and that that portion of the litter picked up with State aid made available pursuant to this subsection which is recyclable shall be recycled.

(1) To be eligible for State aid under this section, a municipality or county must certify to the Department of Environmental Protection the adoption of one of the programs. Upon certification by the municipality or county of the enactment of an ordinance or resolution or regional plan establishing one of the model programs, the department shall distribute the State aid based upon the percentage distribution specified in this section subject to the appropriation made therefor.

(2) Every county and municipality shall submit an annual report to the Department of Environmental Protection on the implementation of the model program and the expenditure of funds. Failure to submit a report or submission of an unsatisfactory report shall result in a denial of future funds and an obligation to return the funds received.

(3) No eligible municipality shall receive less than $4,000.00 in State aid as apportioned pursuant to subsections b. and c. of this section. A municipality or county may use up to 5% of its State aid for administrative expenses;

f. 5% of the estimated annual balance of the account shall be annually appropriated to and used by the department for State administrative expenses and a State public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior;

g. The department shall annually submit a report to the Governor and the Legislature detailing the administration of and disbursements made from the Clean Communities Account during the previous calendar year, including the uses and expenditure of moneys appropriated to the department pursuant to subsections a. and f. of this section.

The department may carry forward any unexpended balances in the Clean Communities Account as of June 30 of each year.

3. Section 8 of P.L.1986, c.187 (C.13:1E-99.9) is amended to read as follows:

C.13:1E-99.9 Report on model county and municipal litter control programs.

8. The department shall report to the Governor and the Legislature on the success of the model county and municipal litter control programs in reducing litter in New Jersey not later than August 30 of each year.

4. This act shall take effect immediately.

Approved January 3, 1996.

CHAPTER 302

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, 1996 and regulating the disbursement thereof," approved June 30, 1995 (P.L.1995, c.164).

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

1. Upon certification by the Director of the Division of Budget and Accounting in the Department of the Treasury that federal funds to support the expenditures listed below are available, the following sum is appropriated:

FEDERAL FUNDS
26 DEPARTMENT OF CORRECTIONS
16 Detention and Rehabilitation
7025 System-Wide Program Support

13-7025 Institutional Program Support..... $600,600

Special Purpose:
Reimbursement for
Illegal Alien Inmates.....($600,600)

2. This act shall take effect immediately.

Approved January 3, 1996.

CHAPTER 303

AN ACT concerning medical witnesses in workers' compensation cases and amending R.S.34:15-64.

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

1. R.S.34:15-64 is amended to read as follows:

Rules, regulations; fees for witnesses, attorneys.

34:15-64. a. The commissioner, director and the judges of compensation may make such rules and regulations for the conduct of the hearing not inconsistent with the provisions of this chapter as may, in the commissioner's judgment, be necessary. The official conducting any hearing under this chapter may allow to the party in whose favor judgment is entered, costs of witness fees and a reasonable attorney fee, not exceeding 20% of the judgment; and a reasonable fee not exceeding $250 for any one witness, except that the following fees may be allowed for a medical witness:

(1) (a) A fee of not more than $200 paid to an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability, if the physician provides the opinion or estimation in a written report; and

(b) An additional fee of not more than $250 paid to the evaluating physician who makes a court appearance to give testimony; or

(2) (a) A fee of not more than $250 paid to a treating physician for the preparation and submission of a report including the entire record of treatment, medical history, opinions regarding diagnosis, prognosis, causal relationships between the treated condition and the claim, the claimant's ability to return to work with or without restrictions, what, if any, restrictions are appropriate, and the anticipated date of return to work, and any recommendations for further treatment; and

(b) (i) An additional fee of not more than $250 per hour, with the total amount not to exceed $1,500, paid to the treating physician who gives testimony concerning causal relationship, ability to work or the need for treatment; or

(ii) An additional fee of not more than $250 per hour, with the total amount not to exceed $750, paid to the treating physician who gives a deposition concerning causal relationship, ability to work or the need for treatment.

b. (1) No fee for an evaluating physician pursuant to this section shall be contingent on whether a judgment or award is or is not made in favor of the petitioner.

(2) No evaluating or treating physician shall charge any fee for a report, testimony or deposition in excess of the amount permitted pursuant to the provisions of this section.

c. A fee shall be allowed at the discretion of the judge of compensation when, in the official's judgment, the services of an attorney and medical witnesses are necessary for the proper presentation of the case. In determining a reasonable fee for medical

witnesses, the official shall consider (1) the time, personnel, and other cost factors required to conduct the examination; (2) the extent, adequacy and completeness of the medical evaluation; (3) the objective measurement of bodily function and the avoidance of the use of subjective complaints; and (4) the necessity of a court appearance of the medical witness. When, however, at a reasonable time, prior to any hearing compensation has been offered and the amount then due has been tendered in good faith or paid within 26 weeks from the date of the notification to the employer of an accident or an occupational disease or the employee's final active medical treatment or within 26 weeks after the employee's return to work whichever is later or within 26 weeks after employer's notification of the employee's death, the reasonable allowance for attorney fee shall be based upon only that part of the judgment or award in excess of the amount of compensation, theretofore offered, tendered in good faith or paid. When the amount of the judgment, or when that part of the judgment or award in excess of compensation, offered, tendered in good faith or paid as aforesaid, is less than $200, an attorney fee may be allowed not in excess of $50.

d. All counsel fees of claimants' attorneys for services performed in matters before the Division of Workers' Compensation, whether or not allowed as part of a judgment, shall be first approved by the judge of compensation before payment. Whenever a judgment or award is made in favor of a petitioner, the judges of compensation or referees of formal hearings shall direct amounts to be deducted for the petitioner's expenses and to be paid directly to the persons entitled to the same, the remainder to be paid directly to the petitioner.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 304

AN ACT concerning penalties for the sale and distribution of tobacco to persons under the age of 18, amending N.J.S.2A:170-51 and P.L.1987, c.423, and supplementing chapter 170 of Title 2A of the New Jersey Statutes.

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

1. N.J.S.2A:170-51 is amended to read as follows:

Ban on tobacco sales to minors; violations, penalties.

2A:170-51. a. Any person who directly or indirectly, acting as agent or otherwise, distributes for commercial purposes at no cost or at minimal cost or with coupons or rebate offers or sells, gives or furnishes to a minor under the age of 18 years, any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, either from a vending machine or by retail counter sales, is liable to a civil penalty of $250 for the first violation, $500 for the second violation and $1,000 for the third and each subsequent violation. In addition, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation may suspend or, after a second or subsequent violation, revoke the license issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail dealer. The licensee shall be subject to administrative charges based on a schedule issued by the Director of the Division of Taxation which may provide for a fine in lieu of the suspension.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser of the tobacco product or person receiving a promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the Division of Motor Vehicles, a similar card issued pursuant to the laws of another state or the federal government or Canada, or a photographic identification card issued by a county clerk, that he was of legal age to make the purchase or receive the sample;

(2) that the appearance of the purchaser of the tobacco product or person receiving a promotional sample was such that an ordinary prudent person would believe him to be of legal age to make the purchase or receive the sample; and

(3) that the sale or distribution was made in good faith, relying upon the production of the identification in paragraph (1), the minor's appearance, and in the reasonable belief that the purchaser or recipient was actually of legal age to make the purchase or receive the sample.

2. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to read as follows:

C.54:40A-4.1 Sign required; violations, penalties.

2. Notwithstanding any other provision of law to the contrary, a person to whom a license is issued pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall as a condition of the license conspicuously post a legible sign at the point of display of the tobacco products and at the point of sale. The sign, which also shall be posted conspicuously on any licensed cigarette vending machine, shall be at least six inches by three inches in bold letters at least one-quarter inch high and shall read as follows:

"A person who sells or offers to sell a tobacco product to a person under 18 years of age shall pay a penalty of up to $1,000 and may be subject to a license suspension or revocation.

Proof of age may be required for purchase."

C.2A:170-51.1 Purchase of tobacco product for minor, petty disorderly person.

3. A person 18 years of age or older who purchases a tobacco product for a person who is under 18 years of age is a petty disorderly person.

C.2A:170-51.2 Vending machine ordinances not preempted.

4. Nothing in P.L.1995, c.304 (C.2A:170-51.1 et al.) shall be construed to preempt the provisions of any municipal ordinance concerning vending machines that dispense tobacco products.

C.2A:170-51.3 Recovery, jurisdiction over penalty.

5. a. A penalty recovered under the provisions of N.J.S.2A:170-51 shall be recovered by and in the name of the local board of health. The penalty shall be paid into the treasury of the municipality where the violation occurred, but shall be appropriated to the local board of health for use by the local health agency in enforcing the provisions of N.J.S.2A:170-51. A penalty recovered under the provisions of N.J.S.2A:170-51 after the enactment of P.L.1995, c.320 (C.26:3A2-20.1 et al.) shall be recovered by and in the name of the municipality. The penalty shall be paid into the treasury of the municipality where the violation occurred for the general uses of the municipality.

b. A municipal court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of the provisions of N.J.S.2A:170-51, 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," N.J.S.2A:58-1 et seq. Process shall be in the nature of a summons or warrant and shall issue by the local board of health or the municipal law enforcement authority.

6. This act shall take effect on the 90th day after enactment.

Approved January 5, 1996.

CHAPTER 305

AN ACT concerning the use of headlights on motor vehicles and amending R.S.39:3-46 and R.S. 39:3-47.

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

1. R.S.39:3-46 is amended to read as follows:

Definitions relative to illuminating devices.

39:3-46. As used in this article, unless the context requires another or different construction:

"Approved" means approved by the commissioner of motor vehicles and when applied to lamps and other illuminating devices means that such lamps and devices must be in good working order and capable of operating at least 50% of their designed efficiency.

"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.

"When lighted lamps are required" means at any time from a half-hour after sunset to a half-hour before sunrise; whenever rain, mist, snow or other precipitation or atmospheric moisture requires the use of windshield wipers by motorists; and during any time when, due to smoke, fog, unfavorable atmospheric conditions or for any other cause there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead.

"Headlamp" means a major lighting device capable of providing general illumination ahead of a vehicle.

"Auxiliary driving lamp" means an additional lighting device on a motor vehicle used primarily to supplement the headlamps in providing general illumination ahead of a vehicle.

"Single beam headlamps" means headlamps or similar devices arranged so as to permit the driver of the vehicle to use but one distribution of light on the road.

"Multiple-beam headlamps" means headlamps or similar devices arranged so as to permit the driver of the vehicle to use one of two or more distributions of light on the road.

"Asymmetric headlamps" means headlamps or similar devices arranged so as to permit the driver of the vehicle to use one of several distributions of light on the road, at least one of which is asymmetric about the median vertical axis.

"Clear road beam" means the beam from multiple-beam headlamps designed to be used when not approaching other vehicles and designed to provide sufficient candlepower ahead to reveal obstacles at a safe distance ahead under ordinary conditions of road contour and of vehicle loading.

"Meeting beam" means the beam from multiple beam or asymmetric headlamps designed to be used when other vehicles are approaching within 500 feet or when signalled and designed so that the illumination on the left side of the road is reduced sufficiently to avoid dangerous glare for the approaching driver.

"Lower beam" means the beam from multiple beam or asymmetric headlamps designed to be directed low enough to avoid dangerous glare on both sides of the roadway.

"Reflector" means an approved device designed and used to give an indication by reflected light.

2. R.S.39:3-47 is amended to read as follows:

Illuminating devices required; violations, fines.

39:3-47. No person shall drive, move, park or be in custody of any vehicle or combination of vehicles on any street or highway unless such vehicle or combination of vehicles is equipped with lamps and illuminating devices as hereinafter in this article respectively required for different classes of vehicles.

a. No person shall drive, move, park or be in custody of any vehicle or combination of vehicles on any street or highway during the times when lighted lamps are required unless such vehicle or combination of vehicles displays lighted lamps and illuminating devices as hereinafter in this article required. Failure to use lighted lamps when lighted lamps are required may result in a fine not to exceed $50.00. In no case shall motor vehicle points or automobile insurance eligibility points pursuant to section 26 of

P.L.1990, c.8 (C:17:33B-14) be assessed against any person for a violation of this subsection. A person who is fined under this subsection for a violation of this subsection shall not be subject to a surcharge under the New Jersey Merit Rating Plan as provided in section 6 of P.L.1983, c.65 (C:17:29A-35).

b. No person shall use on any vehicle any approved electric lamp or similar device unless the light source of such lamp or device complies with the conditions of approval as to focus and rated candlepower.

c. No person shall alter the equipment or performance of equipment of any vehicle which has been approved at an official inspection station designated by the commissioner with intent to defeat the purpose of such inspection, and no person shall drive or use any vehicle with equipment so altered.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 306

AN ACT concerning the conveyance of certain State-owned lands and supplementing P.L.1993, c.38 (C.13:1D-51 et seq.).

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

C.13:1D-58 Nonapplicability of C.13:1D-51 et seq.; hearing, determination.

1. a. The provisions of P.L.1993, c.38 (C.13:1D-51 et seq.) shall not apply in the case of conveyances by the State or the department involving an exchange of lands within the pinelands area, as defined in section 10 of P.L.1979, c.111 (C.13:18A-11), or within the Hackensack Meadowlands District, as defined in section 4 of P.L.1968, c.404 (C.13:17-4), to the federal government or any agency or entity thereof, another State agency or entity, or a local unit, provided the lands to be conveyed are used for recreation or conservation purposes, shall continue to be used for recreation or conservation purposes and it has been determined pursuant to subsection c. of this section that the proposed recreation and conservation purposes for the lands do not significantly alter the ecological and environmental value of the lands being exchanged.

b. Prior to any conveyance of lands that is exempted from the provisions of P.L.1993, c.38 (C.13:1D-51 et seq.) pursuant to subsection a. of this section, the Department of Environmental Protection shall conduct

at least one public hearing on the proposed conveyance in the municipality in which the lands proposed to be conveyed are located. The local unit proposing the recreation or conservation use of the lands being exchanged shall present its proposal for the use of the lands being exchanged at the public hearing, including a description of the proposed recreation or conservation use of the lands and any proposed alterations to the lands for the recreation or conservation purposes.

c. As a condition of any conveyance of lands that is exempted from the provisions of P.L.1993, c.38 (C.13:1D-51 et seq.) pursuant to subsection a. of this section, and prior to any public hearing required pursuant to subsection b. of this section, the Pinelands Commission, or the Hackensack Meadowlands Development Commission, as appropriate, after consultation with the local units in which the lands to be conveyed are located, shall determine that the proposed recreation or conservation purpose does not significantly alter the ecological and environmental value of the lands being exchanged. The appropriate commission shall determine that the proposed recreation or conservation purpose does not significantly alter the ecological and environmental value of the lands being exchanged, if:

(1) the appropriate commission determines that any proposed recreation or conservation use of the lands being exchanged is consistent with the law, rules and regulations governing the protection and development of the pinelands area or pinelands preservation area, as appropriate and as defined in section 10 of P.L.1979, c.111 (C.13:18A-11), or the Hackensack Meadowlands District, as defined in section 4 of P.L.1968, c.404 (C.13:17-4), and the requirements of the law, rules or regulations have been met to the satisfaction of the appropriate commission; and

(2) a portion of the lands would be maintained in an undeveloped or pre-conveyance state and no wetlands would be negatively affected in violation of State or federal law, or any rules or regulations adopted pursuant thereto.

The determinations required pursuant to this subsection shall be made available to the public at the time of the public hearing required pursuant to subsection b. of this section.

d. For the purposes of this section, "local unit" means a municipality, county, or other political subdivision of the State, or any agency thereof authorized to administer, protect, develop and maintain lands for recreation and conservation purposes.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 307

AN ACT concerning criminal assault in certain cases and amending N.J.S.2C:11-1 and 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:11-1 is amended to read as follows:

Definitions.

2C:11-1. Definitions.

In chapters 11 through 15, unless a different meaning plainly is required:

a. "Bodily injury" means physical pain, illness or any impairment of physical condition;

b. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

c. "Deadly weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury;

d. "Significant bodily injury" means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.

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

(b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or

(c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or

(d) Any school board member or school administrator, teacher or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board; or

(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

(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.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2) and b. (7) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree.

c. A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. A person who commits a simple assault as defined in subsection a. of this section is guilty of a crime of the fourth degree if the person acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 308

AN ACT requiring certain rate reductions for private passenger automobile insurance and supplementing Title 17 of the Revised Statutes.

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

C.17:33B-45.1 Rate reduction for automobile insurance after approved defensive driving course.

1. a. Within 180 days of the effective date of this act, every rate filing for private passenger automobile insurance shall contain an appropriate reduction for personal injury protection coverage, bodily injury liability coverage, property damage coverage, and physical damage coverage for the successful completion, by the named insured or the principal operator of the insured automobile, if other than the named insured, of an approved motor vehicle defensive driving course pursuant to section 55 of P.L.1990, c.8 (C.17:33B-45). The reduction in premium charges shall be an amount justified by the insurer's actuarial experience, and shall be available to the insured for a three-year period beginning with the next succeeding policy period after the date of completion of an approved motor vehicle defensive driving course or until driver's license suspension or the accumulation of four or more motor vehicle points, whichever occurs earlier.

b. The provisions of subsection a. of this section shall not apply to insureds who qualify for the reduction in premium charges after the first day of the 48th month following the enactment date of this act.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 309

AN ACT concerning State beverage distributor licenses and amending R.S.33:1-11.

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

1. R.S.33:1-11 is amended to read as follows:

Class B alcoholic licenses; subdivisions, classifications.

33:1-11 Class B licenses shall be subdivided and classified as follows:

Plenary wholesale license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute alcoholic beverages to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom; provided, however, that the delivery of such alcoholic beverages by the holder of this license to retailers licensed under this Title shall be from inventory in a warehouse located in New Jersey which is operated under a plenary wholesale license. The fee for this license shall be $7,000.00.

Limited wholesale license. 2a. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute brewed malt alcoholic beverages and naturally fermented wines to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom. The fee for this license shall be $1,500.00.

Wine wholesale license. 2b. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute any naturally fermented, treated, blended, fortified and sparkling wines to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom; provided, however, that the delivery of such wines by the holder of this license to retailers licensed under this Title shall be from inventory in a warehouse located in New Jersey which is operated under a wine wholesale license. The fee for this license shall be $3,000.00.

State beverage distributor's license. 2c. (1) The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute unchilled, brewed, malt alcoholic beverages in original containers only, in quantities of not less than 144 fluid ounces and chilled draught malt alcoholic beverages in kegs, barrels or other similar containers of at least one fluid gallon in capacity, to retailers licensed in accordance with this chapter, and to sell and distribute without this State to any person pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom. The holder of this license may sell unchilled, brewed, malt alcoholic beverages in original containers only, in quantities of not less than 144 fluid ounces and chilled draught malt alcoholic beverages in kegs, barrels or other similar containers of at least 7.75 fluid gallons in capacity, at

retail; provided, however, that such sales shall be made only for consumption off the licensed premises. This license shall not be issued to any person holding a plenary or limited brewery license, nor shall it be issued to any person directly or indirectly interested in any brewery within or without this State. This license shall not be issued for premises in or upon which any retail business, except the sale of malt alcoholic beverages and nonalcoholic beverages, is carried on. The fee for this license shall be $825.

(2) After the effective date of P.L.1995, c.309 any license issued or transferred pursuant to this subsection for a premises located in a municipality in a county of the fifth or sixth class shall be limited to prohibit retail sales.

(3) The holder of a license issued pursuant to this subsection shall not be entitled to sell malt alcoholic beverages at retail as provided in paragraph (1) of this subsection, at hours of the day or on days of the week during which sales by holders of plenary retail distributors licenses are prohibited in the municipality in which the licensed premises is located or in a municipality which, in accordance with the provisions of this title, prohibits all retail sales of wine and malt alcoholic beverages in original bottle or can containers.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 310

AN ACT concerning the use of certain health care facilities by licensed psychologists and amending P.L.1983, c.28.

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

1. Section 1 of P.L.1983, c.28 (C.26:2H-12.1) is amended to read as follows:

C.26:2H-12.1 Health care facility to provide privileges for podiatrists, psychologists.

1. a. Any health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), which provides medical or surgical

care, shall provide for the use of the facility by, and appropriate privileges for, duly licensed podiatrists and psychologists. Use of the facility and privileges of a podiatrist or psychologist shall be subject to nondiscriminatory rules and regulations governing such use or privileges established by the governing body of the facility for persons licensed as physicians and surgeons pursuant to R.S.45:9-6 and dentists pursuant to R.S.45:6-19.

b. Nothing in this act shall be construed to require a hospital to grant admitting privileges to a psychologist or to permit the exercise of those privileges granted by the hospital without appropriate collaboration with the attending physician of the patient who is receiving or will receive care or treatment from the psychologist.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 311

AN ACT concerning domestic livestock and animal cruelty and welfare laws, amending R.S.4:22-16, supplementing chapter 22 of Title 4 of the Revised Statutes, and making an appropriation.

Note: In approving the following act, certain items were deleted or reduced by the Governor. For a statement of those items, see the Governor's statement appended to Senate Bill No. 713 (First Reprint), dated January 5, 1996.

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

C.4:22-16.1 Adoption of standards, rules, regulations for treatment of domestic livestock.

1. a. The State Board of Agriculture and the Department of Agriculture, in consultation with the New Jersey Agricultural Experiment Station and within six months of the date of enactment of this act, shall develop and adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.): (1) standards for the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock; and (2) rules and regulations governing the enforcement of those standards.

b. Notwithstanding any provision in this title to the contrary:

(1) there shall exist a presumption that the raising, keeping, care, treatment, marketing, and sale of domestic livestock in accordance with the standards developed and adopted therefor pursuant to subsection a. of this section shall not constitute a violation of any provision of this title involving alleged cruelty to, or inhumane care or treatment of, domestic livestock;

(2) no person may be cited or arrested for a first offense involving a minor or incidental violation, as defined by rules and regulations adopted pursuant to subsection a. of this section, of any provision of this title involving alleged cruelty to, or inhumane care or treatment of, domestic livestock, unless that person has first been issued a written warning.

c. For the purposes of this act, "domestic livestock" means cattle, horses, donkeys, swine, sheep, goats, rabbits, poultry, fowl, and any other domesticated animal deemed by the State Board of Agriculture and the Department of Agriculture, in consultation with the New Jersey Agricultural Experiment Station, to be domestic livestock for such purposes, according to rules and regulations adopted by the department and the board pursuant to the "Administrative Procedure Act."

2. R.S.4:22-16 is amended to read as follows:

Permitted activities.

4:22-16. Nothing contained in this article shall be construed to prohibit or interfere with:

a. Properly conducted scientific experiments performed under the authority of the Department of Health or the United States Department of Agriculture. Those departments may authorize the conduct of such experiments or investigations by agricultural stations and schools maintained by the State or federal government, or by medical societies, universities, colleges and institutions incorporated or authorized to do business in this State and having among their corporate purposes investigation into the causes, nature, prevention and cure of diseases in men and animals; and may for cause revoke such authority;

b. The killing or disposing of an animal or creature by virtue of the order of a constituted authority of the State;

c. The shooting or taking of game or game fish in such manner and at such times as is allowed or provided by the laws of this State;

d. The training or engaging of a dog to accomplish a task or participate in an activity or exhibition designed to develop the

physical or mental characteristics of that dog. These activities shall be carried out in accordance with the practices, guidelines or rules established by an organization founded for the purpose of promoting and enhancing working dog activities or exhibitions; in a manner which does not adversely affect the health or safety of the dog; and may include avalanche warning, guide work, obedience work, carting, dispatching, freight racing, packing, sled dog racing, sledding, tracking, and weight pull demonstrations;

e. The raising, keeping, care, treatment, marketing, and sale of domestic livestock in accordance with the standards developed and adopted therefor pursuant to subsection a. of section 1 of P.L.1995, c.311 (C.4:22-16.1).

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 312

AN ACT concerning well drillers and pump installers, establishing a "well sealing fund," amending the title and amending and supplementing the body of P.L.1947, c.377, amending P.L.1979, c.398, amending and supplementing P.L.1951, c.193, and repealing parts of the statutory law.

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

1. The title of P.L.1947, c.377 is amended to read as follows:

Title amended.

An act to conserve certain natural resources of the State and to protect the public health; to provide for the licensing of well drillers and pump installers; to establish standards for the construction and installation of wells and the installation of pumps; to fix fees; and to provide penalties for violations.

2. Section 2 of P.L.1951 c.193 (C.58:4A-4.1) is amended to read as follows:

C.58:4A-4.1 Responsibilities of well owner, drilling contractors; violations.

2. The owner of any well shall be responsible for having the well sealed in accordance with the rules and regulations of the department if the well is not in use or if it endangers or threatens the subsurface or percolating waters by the intrusion of salt water or from any other cause, or if it endangers life. Notwithstanding the well owner's responsibility to seal a well, the drilling contractor is also and primarily responsible for sealing a borehole or well that is abandoned during construction or is not completed or constructed in accordance with rules and regulations in effect at the time of construction. Any person who violates the provisions of this section shall be guilty of a disorderly persons offense and shall be subject to the penalty provisions and other remedies set forth in section 20 of P.L.1947, c.377 (C.58:4A-24). Nothing in this section shall be construed to limit the ability of the owner of a well to seek indemnification, contribution, or other civil damages from the drilling contractor as may be authorized pursuant to any other statutory or common law.

3. Section 3 of P.L.1951, c.193 (C.58:4A-4.2) is amended to read as follows:

C.58:4A-4.2 Sealing of abandoned borehole, well.

3. The department shall have the power to direct the sealing of any abandoned borehole or well not in use, or any well when, in its judgment, the condition of the well endangers or threatens the subsurface or percolating waters by the intrusion of salt water or from any other cause, or if it endangers life. The department may, when it determines that an emergency condition exists, direct the prompt sealing of an abandoned borehole or well. An owner or drilling contractor of any abandoned borehole or well who is responsible for having that borehole or well sealed pursuant to section 2 of P.L.1951, c.193 (C.58:4A-4.1) but fails or refuses to seal it in the time and manner directed by the department shall be subject to the penalty provisions and other remedies set forth in section 20 of P.L.1947, c.377 (C.58:4A-24).

C.58:4A-4.2a Departmental discretion to seal borehole, well; treble damages.

4. If a well is not in use, or if a well is found by the department to endanger or threaten the subsurface or percolating waters by the intrusion of salt water or from any other cause, or if it endangers life, or if an abandoned borehole exists, and the responsible party cannot be found or refuses to seal the borehole or well as directed by the department pursuant to section 3 of P.L.1951, c.193 (C.58:4A-4.2), the department may, in its discretion, act to seal the

borehole or well. A responsible party who fails to comply with a directive to seal a borehole or well shall be liable to the department in an amount equal to three times the cost of sealing the borehole or well. The amount shall be assessed and recovered in accordance with section 20 of P.L.1947, c.377 (C.58:4A-24), and the amount collected shall be deposited in the "well sealing fund" established pursuant to section 5 of P.L.1995, c.312 (C.58:4A-4.2b).

C.58:4A-4.2b "Well sealing fund" established.

5. There is established in the Department of Environmental Protection a nonlapsing, revolving fund, to be known as the "well sealing fund." All penalties collected by the department for violations of sections 2 and 3 of P.L.1951, c.193 (C.58:4A-4.1 and C.58:4A-4.2), and all monies recovered by the department pursuant to section 4 of P.L.1995, c.312 (C.58:4A-4.2a), shall be deposited into the "well sealing fund." The fund shall be utilized solely for the purpose of administering and conducting a well sealing program as provided in section 4 of P.L.1995, c.312 (C.58:4A-4.2a).

6. Section 1 of P.L.1947, c.377 (C.58:4A-5) is amended to read as follows:

C.58:4A-5 Rules, regulations.

1. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the provisions of P.L.1947, c.377 (C.58:4A-5 et seq.), including construction and other standards applicable to engaging in well drilling and pump installing.

7. Section 2 of P.L.1947, c.377 (C.58:4A-6) is amended to read as follows:

C.58:4A-6 Requirements for well drilling, pump installation.

2. a. No person, partnership or corporation shall engage in well drilling or pump installation in this State, except as provided in section 20 of P.L.1947, c.377 (C.58:4A-24), unless that individual, if a person, or member of the firm, if a partnership, or executive officer, if a corporation:

(1) possesses a valid New Jersey license of the proper class; or

(2) secures the services of a person possessing a valid New Jersey license of the proper class.

The department shall establish, by regulation, classes of licenses required for all well drilling and pump installing activities.

b. No person, partnership, or corporation shall employ more than three other well drillers in well drilling in this State unless the well drillers' supervisor is qualified as a master well driller pursuant to the criteria established therefor under the rules and regulations of the department.

c. No other agency or political subdivision of the State is authorized to license or to establish standards, requirements, or specifications for well drilling or pump installation regulated pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.).

8. Section 3 of P.L.1947, c.377 (C.58:4A-7) is amended to read as follows:

C.58:4A-7 Board of well driller and pump installer examiners created.

3. A board of nine well driller and pump installer examiners is created, to be appointed by the commissioner, which shall function as an examining board of well drillers and pump installers, and as an advisory board to the department. The board shall be constituted as follows: three members of the board shall be employees of the department; one member shall be a person not employed by the State or pecuniarily involved in well drilling or pump installing; one member shall be licensed as a well driller in any classification established by the department; one member shall be licensed as a pump installer; and the remaining three members shall be licensed as master well drillers. Members of the board shall be appointed for terms of three years. A quorum of the board shall consist of five members, except that a quorum shall not exist unless at least three of the members present are the licensed well driller or pump installer members. No action may be approved by the board except upon the approval of a majority of the members present. All persons appointed to the board shall be citizens of the United States and residents of the State of New Jersey. The commissioner may remove any member of the board, after hearing, for misconduct, incompetence, neglect of duty or for any other sufficient cause.

9. Section 4 of P.L.1947, c.377 (C.58:4A-8) is amended to read as follows:

C.58:4A-8 "State Well Drillers and Pump Installers Examining and Advisory Board."

4. The board so appointed shall be designated and known as the "State Well Drillers and Pump Installers Examining and Advisory Board."

Each member of the board, except those who are employees of the department, shall receive actual and necessary expenses, such charges to be approved by the commissioner and paid from monies in the "Environmental Services Fund" established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), as are appropriated to the department for this purpose.

10. Section 6 of P.L.1947, c.377 (C.58:4A-10) is amended to read as follows:

C.58:4A-10 Powers, duties of board.

6. The board shall be vested with the following powers and duties:

a. It shall be the duty of the board to recommend and consent to examination questions, review applications to ascertain the experience and qualifications of persons applying for a license, review examination results, and recommend to the department when licenses should be issued or denied. A board recommendation that a license be issued or denied shall be adopted at the next scheduled meeting following completion of the examination therefor. Examinations may be oral or written, and may include observation of applicants for any license in the field, or any combination thereof, and shall cover the proper methods and regulatory procedures of well drilling and pump installation.

b. It shall, by a majority of all its members, formulate and recommend to the department rules, regulations, and standards, including construction standards for engaging in well drilling or pump installing which shall be applicable to any person licensed under this act.

11. Section 7 of P.L.1947, c.377 (C.58:4A-11) is amended to read as follows:

C.58:4A-11 Licenses; issuance, classifications.

7. a. The department shall, upon recommendation of the board and payment of the required fee, issue licenses to persons to engage in well drilling or pump installing.

b. The department shall adopt various classifications of well driller licenses to reflect the different well drilling disciplines. Beginning eighteen months after the effective date of P.L.1995, c.312 (C.58:4A-4.2a et al.), the department:

(1) Shall issue a new well driller license only for the classification of well driller for which an applicant qualifies, based upon passing a licensing examination for that classification; and

(2) Shall issue a new master well driller license only to an applicant who has passed the examination for each classification of well driller established by the department pursuant to section 1 of P.L.1947, c.377 (C.58:4A-5).

12. Section 8 of P.L.1947, c.377 (C.58:4A-12) is amended to read as follows:

C.58:4A-12 Suspension, revocation of license; charges; hearing; final agency action.

8. The board may, after conducting a hearing, recommend that the commissioner revoke indefinitely or suspend for a period of less than one year the license of any well driller or pump installer, if the license was obtained through error or fraud, or if the board shall find the well driller or pump installer guilty of gross neglect, incompetency, or misconduct in the practice of well drilling or pump installing or if the holder thereof has willfully violated any provision of P.L.1947, c.377 (C.58:4A-5 et seq.) or of P.L.1951, c.193 (C.58:4A-4.1 et seq.), or any rule or regulation adopted pursuant thereto. The recommendation of the board shall be made in writing and shall be accompanied by all documentation resulting from the hearing held by the board. Any person whose license has been revoked may, after the expiration of one year from the date of revocation, apply for a new license. Any person whose license has been suspended may, after expiration of the period of suspension, be reinstated upon review and approval by the board.

The charges against any well driller or pump installer against whom complaint is made shall be in writing and sworn to by the complainant, and filed with the board.

Such charges, unless dismissed by the board as unfounded or trivial, shall be heard and determined by the board within three months after the date on which they are preferred unless the board shall determine that good cause exists for further delay. The board shall have the power at any such proceeding to require the attendance of witnesses before it, and the production of such books, papers and documents as it may require, and to issue or authorize the issuance of subpoena therefor.

The time and place of the hearing, which may be adjourned from time to time, shall be fixed by the board. A copy of the charges, together with a notice of the time and place of hearing, shall be served on the accused by the board personally or by certified mail, addressed to his last known place of residence at least 30 days before the day fixed for the hearing. At the hearing the accused shall have

the right to appear personally or by counsel and to cross-examine witnesses against him and to produce evidence in his defense.

The commissioner may accept, reject, or modify the recommendation of the board. A decision of the commissioner shall represent final agency action for the purposes of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

13. Section 9 of P.L.1947, c.377 (C.58:4A-13) is amended to read as follows:

C.58:4A-13 On-site supervision required.

9. a. Any operation on the drilling, boring, coring, driving, jetting, digging, sealing or other construction or repair of wells shall be under the immediate on-site supervision of a licensed well driller of the proper class, and the name of the well drilling contractor shall be displayed on the equipment used by such driller.

b. Any installation, removal, alteration, or repair of well pumping equipment or appurtenances shall be under the immediate on-site supervision of a licensed pump installer or a licensed well driller, and the name of the pump installing contractor or well drilling contractor shall be displayed on the equipment used in the installation, removal, alteration or repair.

c. Nothing in P.L.1947, c.377 (C.58:4A-5 et seq.) shall be construed as applying to the drilling of blast holes in quarries or mines; or to persons licensed pursuant to, and acting in accordance with, P.L.1968, c.362 (C.45:14C-1 et seq.); or to excavations that do not endanger or threaten subsurface or percolating waters or endanger life and that are not defined as a well pursuant to section 19 of P.L.1947, c.377 (C.58:4A-23), including, but not limited to, septic system installations, wetlands determinations, and site suitability studies.

14. Section 10 of P.L.1947 c.377 (C.58:4A-14) is amended to read as follows:

C.58:4A-14 Permit required, application; fees.

10. a. (1) Except in the case of an emergency or a general permit, no well requiring a permit shall be constructed until a permit has been issued therefor by the department. Application for a permit shall be made upon forms prescribed and supplied by the department, and the applicant shall give such information pertaining to the proposed well as the department shall require. The department may issue a site-wide permit for the construction of

multiple wells at a site, subject to standards adopted by the department by regulation.

(2) The department shall adopt, by regulation, a general permit for the construction of certain categories of wells up to a depth of 50 feet and a maximum diameter to be set by the department to protect public health and safety.

b. The department shall adopt and periodically revise, by regulation, well permit requirements, including emergency permits, and regulations establishing a fee schedule setting forth reasonable application and permit fees to cover the costs of administering permit and permit enforcement programs. Permit fees shall not include the cost to the department of operating well drilling equipment, except when the department seals a well. The department may allocate a portion of the permit fees to local health agencies certified pursuant to P.L.1977, c.443 (C.26:3A2-21 et seq.) for administration and enforcement of permits issued pursuant to this act. Upon adoption of a fee schedule pursuant to this subsection, the fees set forth in the fee schedule shall supercede the fees set forth in subsection d. of this section.

c. As a further condition to the issuance of a permit, the department may require that accurate samples of the materials encountered in constructing the proposed well shall be preserved and delivered to the department. Within 90 days of the completion of the construction of any permitted well, a well record, on forms prescribed and supplied by the department, shall be filed by the driller with the department giving the log (i.e. description of materials penetrated), the size and depth of the well, the diameters and lengths of casing and screen installed therein, the static and pumping levels and the yield of the well, and such other information pertaining to the construction or operation of the well as the department may require.

d. Pending adoption by regulation of a permit fee schedule by the department in accordance with subsection b. of this section, the following permit fees shall be required: (1) a fee of $50 for each permit for a well with a pumping capacity of under 70 gallons per minute; (2) a fee of $125 for each permit for a well with a pumping capacity of 70 gallons or more per minute; and (3) a fee of $100 for each site-wide permit. Payment of the fee shall accompany each permit application.

C.58:4A-14.1 Expedited permit processing service, account established.

15. a. The department shall establish an expedited permit processing service for well permit applications. This service shall accept properly completed permit applications by electronic media, including but not limited to telefax machines. The department may establish, by regulation, an additional fee not to exceed the cost of maintaining this expedited service.

b. There is established within the department a special dedicated non-lapsing account into which any person licensed pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.) may deposit and maintain such funds as shall be sufficient to cover permit or license renewal fees that the licensee may accrue from permit or license renewal applications. Upon authorization of the licensee, the department may withdraw from this account permit application or license renewal fees for any well permit or license renewal application.

16. Section 12 of P.L.1947, c.377 (C.58:4A-16) is amended to read as follows:

C.58:4A-16 Licensing without examination.

12. The department may license without examination, upon payment of the required license fee, applicants who are duly licensed under the laws of any other state having requirements deemed by the department to be at least equivalent to those of this State.

17. Section 14 of P.L.1947, c.377 (C.58:4A-18) is amended to read as follows:

C.58:4A-18 Renewal of license.

14. A license once issued, unless revoked or suspended, may be renewed at any time within one year before its expiration date on application therefor and payment of the required renewal fee, and any such renewal shall become effective on and after July 1 next following the date of renewal. A license not renewed prior to its expiration date may be reinstated within six months of the expiration date by payment of the license renewal fee.

After the six-month period, renewal shall require the passing of an examination prescribed by the department pursuant to section 7 of P.L.1947, c.377 (C.58:4A-11) for applicants for new licenses.

18. Section 15 of P.L.1947, c.377 (C.58:4A-19) is amended to read as follows:

C.58:4A-19 Fee schedule.

15. a. Pending adoption by regulation of a fee schedule by the department pursuant to subsection b. of this section, the following fees shall be required for licenses and renewals:

Master well driller's license	$75
Journeyman well driller's license	$30
Renewal of master well driller's license	$75
Renewal of journeyman well driller's license	$30
Pump installer's license	$30
Renewal of pump installer's license	$30

b. The department shall adopt, and may periodically amend, by regulation, a fee schedule setting forth reasonable fees for license applications and examinations, and for issuance and renewal of any license in amounts adequate to cover the costs of administering all licensing and license enforcement programs. Upon adoption of a fee schedule pursuant to this subsection, the fees set forth in the fee schedule shall supersede the fees set forth in subsection a. of this section.

All revenues derived from this section, section 10 of P.L.1947, c.377 (C.58:4A-14), and section 15 of P.L.1995, c.312 (C.58:4A-14.1) shall be deposited in the "Environmental Services Fund" established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), and shall be used for the administration of well programs pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.).

19. Section 16 of P.L.1947, c.377 (C.58:4A-20) is amended to read as follows:

C.58:4A-20 Powers, rights of department.

16. The department shall have the power to make such inspections and take such samples as may be deemed necessary for the investigation of the construction, sealing, and repair of wells throughout the State. The department shall also have the right to enter upon any and all property for the purpose of obtaining information about wells, whether idle, in use or abandoned.

20. Section 16 of P.L.1979, c.398 (C.58:4A-20.1) is amended to read as follows:

C.58:4A-20.1 Authority of master well driller.

16. A master well driller shall have the authority to certify that the well, including well pumping equipment and appurtenances thereto, has been constructed to meet the standards promulgated pursuant to P.L.1954, c.199 (C.58:11-23 et seq.), P.L.1977, c.224 (C.58:12A-1 et seq.), and P.L.1947, c.377 (C.58:4A-5 et seq.).

21. Section 19 of P.L.1947, c.377 (C.58:4A-23) is amended to read as follows:

C.58:4A-23 Definitions relative to well drilling.

19. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection.

"Well" means a hole or excavation larger than a minimum diameter and depth established by department regulations pursuant to section 1 of P.L.1947, c.377 (C.58:4A-5) that is drilled, bored, cored, driven, jetted, dug, or otherwise constructed for the purpose of removal or emplacement of, or investigation of, or exploration for, fluids, water, oil, gas, minerals, soil, or rock, or for the installation of an elevator shaft.

"Well drilling" means the drilling, digging, driving, boring, coring, sealing, jetting, or other construction or repair of any well.

"Well driller" means a person possessing a New Jersey license as a well driller of the proper class, including but not limited to test borers and such other classifications as the department establishes by regulation, who engages in well drilling or pump installing.

"Master well driller" means a well driller possessing a New Jersey master well driller's license who has at least five years' experience in the trade, business, or calling of well drilling, including at least two years of experience as a licensed journeyman well driller in this State, and is skilled in the planning, superintending, and practical construction of wells, and the installation and repair of well pumping equipment and appurtenances thereto.

"Journeyman well driller" means a well driller possessing a New Jersey journeyman well driller's license who has at least three years of experience under the supervision of a New Jersey licensed well driller in the trade, business, or calling of well drilling, with concentration in the practical construction of wells, and the installation and repair of well pumping equipment and appurtenances thereto, or who satisfies equivalent experience and other requirements as prescribed by the department.

"Pump" means a mechanical device used to remove or emplace gases, water or fluids from or into a well.

"Pump installer" means a person possessing a New Jersey license as a pump installer who has at least one year of experience under the supervision of a New Jersey licensed well driller or a New Jersey licensed pump installer, and is qualified to engage in pump installing.

"Pump installing" means the installation, removal, alteration, or repair of well pumping equipment and appurtenances thereto in connection with any well including connecting lines between a well and storage tank or appurtenance thereto.

"Board" means the "State Well Drillers and Pump Installers Examining and Advisory Board."

"Department" means the Department of Environmental Protection.

"License of the proper class" or "license" means a document issued to a person pursuant to section 7 of P.L.1947, c.377 (C.58:4A-11) authorizing the individual to engage and perform work in the trade, business, or calling of well drilling, or pump installing.

22. Section 20 of P.L.1947, c.377 (C.58:4A-24) is amended to read as follows:

C.58:4A-24 Violations, penalties.

20. a. Any person who shall engage in the trade, business, or calling of a well driller, or who shall operate a well drilling machine without having a New Jersey license, except in the presence and under the immediate on-site supervision of a New Jersey licensed well driller of the proper class, or any person, partnership, or corporation that engages in the trade, business, or calling of well drilling without employing a New Jersey licensed well driller to operate a well drilling machine, or that engages in the trade, business, or calling of pump installing without employing a New Jersey licensed pump installer or New Jersey licensed well driller, for the work or the immediate on-site supervision of the actual work, or that operates without a permit as provided in this act, or that negligently aids or abets in the commission of any violation, or that violates any provision of P.L.1947, c.377 (C.58:4A-5 et seq.), any rule or regulation adopted, or order or directive issued, pursuant thereto, shall be subject to, as applicable, any or all of the following:

(1) A civil administrative penalty imposed pursuant to subsection c. of this section;

(2) A civil penalty collected, as provided in subsection d. of this section, in an action by the department, or a political subdivision of the State, in a court of competent jurisdiction in a summary proceeding pursuant to "the penalty enforcement law," (N.J.S.2A:58-1 et seq.);

(3) A civil action in accordance with subsection b. of this section; or

(4) An order by the department requiring a violator to comply with the provisions of this act or any rules or regulations adopted pursuant thereto in accordance with subsection e. of this section.

Use of any remedy available pursuant to this subsection shall not preclude the use of any other remedy available thereunder, except that not more than one monetary penalty may be assessed for any single violation. Any penalties or costs collected in an action brought by a political subdivision pursuant to paragraph (2) of this subsection shall be payable to that political subdivision.

Acceptance by any person, partnership, or corporation of any money or other consideration of value for the construction of any well or installation or repair of a pump by anyone other than a licensed well driller of the proper class or licensed pump installer, shall be deemed prima facie evidence of the violation of this act.

b. The department may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of P.L.1947, c.377 or of any rule, regulation, order, or directive issued pursuant thereto, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

(1) Assessment of the reasonable costs of any investigation, inspection or monitoring survey that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;

(2) Assessment of the reasonable cost incurred by the State in terminating any adverse effects of a violation on water quality or other elements of the environment;

(3) Assessment of compensatory damages for any loss or destruction of wildlife, fish or other aquatic life, or other natural resources, and for any other actual damages;

(4) The recovery of the costs of sealing a well as may be required pursuant to section 4 of P.L.1995, c.312 (C.58:4A-4.2a); and

(5) A temporary or permanent injunction.

Compensatory damages collected pursuant to paragraph (3) of this subsection shall be paid to the General Fund, except that

compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the violation. Recovery of assessments pursuant to paragraph (4) of this subsection shall be paid into the "well sealing fund" established pursuant to section 5 of P.L.1995, c.312 (C.58:4A-4.2b).

c. The department may assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than $5,000 for each violation directly related to the construction of a well, and a civil administrative penalty of not more than $1,000 for each violation that is not construction-related, and each day during which a violation continues shall constitute an additional, separate and distinct offense.

Any amount assessed under this subsection shall fall within a range established by regulation by the department for violations of a similar type, seriousness, and duration.

In adopting rules for a uniform civil administrative penalty policy for determining the amount of a civil administrative penalty to be assessed, the department shall take into account the type, seriousness, extent and frequency of a violation, the harm to the public health or the environment resulting from the violation, the economic benefits from the violation gained by the violator, the degree of cooperation or recalcitrance of the violator in remedying the violation, any measures taken by the violator to avoid a repetition of the violation, and any other pertinent factors that the department determines measure the seriousness or frequency of the violation, or conduct of the violator.

No civil administrative penalty shall be levied pursuant to this subsection until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order or directive violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil administrative penalties to be imposed; and a statement of the party's right to a hearing. The party shall have twenty days from the receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order assessing a penalty up to the amount of the penalty specified in the order. If no hearing is requested, the notice shall become a final order on the twenty-first day after receipt of the notice. Payment of the assessment is due when a final order is issued, or the notice becomes a final order.

d. Any person who violates the provisions of P.L.1947, c.377, or any rule or regulation adopted, or order or directive issued pursuant thereto, or a court order issued pursuant to subsection b. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection c. of this section, shall be subject, upon order of a court, to a civil penalty of not more than $5,000 for each violation directly related to the construction of a well, and a civil administrative penalty of not more than $1,000 for each violation that is not construction-related, and each day the violation continues shall constitute an additional, separate, and distinct offense.

Any civil action to impose a penalty pursuant to this subsection may be commenced in the Superior Court or in the municipal court and that penalty may be enforced and collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

e. Whenever the department finds that a person has violated any provision of P.L.1947, c.377, or any rule or regulation adopted, or order or directive issued pursuant thereto, the department may issue an order specifying the provision or provisions of P.L.1947, c.377, or the rule, regulation, or order or directive issued, pursuant thereto, of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of the right to a hearing on the matters contained in the order. The ordered party shall have 20 calendar days from receipt of the order within which to deliver to the department a written request for a hearing. Such order shall be effective upon receipt and any person to whom such order is directed shall comply with the order immediately. A request for hearing shall not automatically stay the effect of the order.

f. The department may compromise any remedy and settle any claim for a penalty under this section in the amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

23. Section 13 of P.L.1947, c.377 (C.58:4A-17) is amended to read as follows:

C.58:4A-17 Expiration of license.

13. Every license issued under the authority of P.L.1947, c.377 (C.58:4A-5 et seq.), unless sooner revoked, shall expire on the thirtieth day of June three years following the date of issuance of such license, except that any license issued prior to the effective date of

P.L.1995, c.312 (C.58:4A-4.2a et al.) shall expire on the thirtieth day of June next following the date of issuance of such license.

C.58:4A-29 Rules, regulations.

24. Within 18 months of the effective date of P.L.1995, c.312 (C.58:4A-4.2a et al.), the department shall adopt, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act.

Repealer.

25. Section 4 of P.L.1951, c.193 (C.58:4A-4.3), and sections 17 and 18 of P.L.1947, c.377 (C.58:4A-21 and 58:4A-22), are repealed.

26. This act shall take effect immediately, except that section 8 shall take effect upon the first expiration after the effective date of a term of one of the master well driller members.

Approved January 5, 1996.

CHAPTER 313

AN ACT concerning the management of condominium associations and amending P.L.1969, c.257.

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

1. Section 14 of P.L.1969, c.257 (C.46:8B-14) is amended to read as follows:

C.46:8B-14 Responsibilities of association.

14. The association, acting through its officers or governing board, shall be responsible for the performance of the following duties, the costs of which shall be common expenses:

(a) The maintenance, repair, replacement, cleaning and sanitation of the common elements.

(b) The assessment and collection of funds for common expenses and the payment thereof.

(c) The adoption, distribution, amendment and enforcement of rules governing the use and operation of the condominium and the condominium property and the use of the common elements subject to the right of a majority of unit owners to change any such rules.

(d) The maintenance of insurance against loss by fire or other casualties normally covered under broad-form fire and extended coverage insurance policies as written in this State, covering all common elements and all structural portions of the condominium property and the application of the proceeds of any such insurance to restoration of such common elements and structural portions if such restoration shall otherwise be required under the provisions of this act or the master deed or bylaws.

(e) The maintenance of insurance against liability for personal injury and death for accidents occurring within the common elements whether limited or general and the defense of any actions brought by reason of injury or death to person, or damage to property occurring within such common elements and not arising by reason of any act or negligence of any individual unit owner.

(f) The master deed or bylaws may require the association to protect blanket mortgages, or unit owners and their mortgagees, as their respective interest may appear, under the policies of insurance provided under clauses (d) and (e) of this section, or against such risks with respect to any or all units, and may permit the assessment and collection from a unit owner of specific charges for insurance coverage applicable to his unit.

(g) The maintenance of accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. Such records shall include:

(i) A record of all receipts and expenditures.

(ii) An account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus.

(h) Nothing herein shall preclude any unit owner or other person having an insurable interest from obtaining insurance at his own expense and for his own benefit against any risk whether or not covered by insurance maintained by the association.

(i) Such other duties as may be set forth in the master deed or bylaws.

(j) An association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(k) An association shall provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation. A person other than an officer of the association, a member of the govern-

ing board or a unit owner involved in the dispute shall be made available to resolve the dispute. A unit owner may notify the Commissioner of Community Affairs if an association does not comply with this subsection. The commissioner shall have the power to order the association to provide a fair and efficient procedure for the resolution of disputes.

2. Section 16 of P.L.1969, c.257 (C.46:8B-16) is amended to read as follows:

C.46:8B-16 Authority, rights of unit owner.

16. (a) No unit owner, except as an officer of the association, shall have any authority to act for or bind the association. An association, however, may assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

(b) Failure to comply with the bylaws and the rules and regulations governing the details of the use and operation of the condominium, the condominium property and the common elements in effect from time to time and with the covenants, conditions and restrictions set forth in the master deed or in deeds of units shall be grounds for an action for the recovery of damages or for injunctive relief or both maintainable by the association or by any other unit owner or by any person who holds a blanket mortgage or a mortgage lien upon a unit and is aggrieved by any such noncompliance.

(c) A unit owner shall have no personal liability for any damages caused by the association or in connection with the use of the common elements. A unit owner shall be liable for injuries or damages resulting from an accident in his own unit in the same manner and to the same extent as the owner of any other real estate.

(d) A unit owner may notify the Commissioner of Community Affairs upon the failure of an association to comply with requests made under subsection (g) of section 14 of P.L.1969, c.257 (C.46:8B-14) by unit owners to inspect at reasonable times the accounting records of the association. Upon investigation, the commissioner shall have the power to order the compliance of the association with such a request.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 314

AN ACT providing family support services for persons with a serious mental illness, 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.30:4-177.43 Short title.

1. This act shall be known and may be cited as the "Family Support for Persons with a Serious Mental Illness Act."

C.30:4-177.44 Findings, declarations relative to family support services for persons with a serouis mental illness.

2. The Legislature finds and declares that:

a. It is in the best interest of the State to preserve, strengthen and maintain families who have a family member with a serious mental illness living at home, and these persons, regardless of their disability, have the right to belong to a family unit in which enduring relationships can be fostered.

b. Families are the major providers of support, care, and other services for their family member with a serious mental illness living at home. Consequently, families are continually searching for ways to support family members with a serious mental illness in their homes in order to prevent placement in a State or private institution, homelessness or inappropriate incarceration.

c. Many families who have a family member with a serious mental illness experience exceptionally high financial outlays and extraordinary physical and emotional challenges, isolation, stigmatization and daily stress. Supporting families in their effort to care for their family member with a serious mental illness at home is efficient, cost-effective and humane; failure to provide needed supports can result in placement of the family member in a costly, inadequate or inappropriate setting.

d. To be effective, family supports must support the entire family, must be easily accessible, flexible, comprehensive, continuous, culturally sensitive and individualized. They must be designed to promote interdependence, independence, productivity and integration of people with a serious mental illness into the community. Family supports must also be built on existing social networks and naturally occurring supports, including extended families, neighbors and community associations.

e. A Statewide family support policy for persons with a serious mental illness must acknowledge that families themselves are able to define their own needs and select their own services; these family supports must be chosen by families, controlled by families and monitored by families.

f. Adults with a serious mental illness should be afforded the opportunity to make decisions for themselves, live in typical homes and communities and exercise their full rights as citizens. When families serve as the primary provider of care for a family member with a serious mental illness, the families should be provided the supports they need to sustain that family member with dignity in a community setting.

C.30:4-177.45 Definitions relative to family support services for persons with a serious mental illness.

3. For the purposes of this act:

"Commissioner" means the Commissioner of Human Services.

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health Services in the Department of Human Services.

"Family" means persons related to the family member with a serious mental illness by blood, marriage, adoption, guardianship, foster care or other significant care giving relationship.

"Family member with a serious mental illness" means a person who has a history, or is at serious risk, of hospitalization in a State, county or private psychiatric institution.

"Family support services" means a coordinated system of ongoing public and private support services which are designed to maintain and enhance the quality of life of a family.

"Family unit" means the family member with a serious mental illness and his family.

"Program" means the program of family support services established pursuant to this act.

C.30:4-177.46 Program of family support services established.

4. There is established in the Division of Mental Health Services of the Department of Human Services a program of family support services designed to strengthen and promote families who provide care in the community for a family member with a serious mental illness.

Family support services shall vary in scope and intensity based upon the needs of a particular family unit and shall include, but not be limited to the following: service coordination, estate and transition planning, housing assistance, homemaker assistance, accessing

vocational and employment services, after-school care, transportation, respite care, family education and training, medication education, and self-advocacy training, including entitlement training.

A family is eligible to participate in the program if the family resides in the State and is actively involved in caring for, or supporting, a family member with a serious mental illness.

No provision of this act shall be construed as requiring the department to expend funds in excess of those appropriated pursuant to this act.

C.30:4-177.47 Monitoring, administering the program; State Family Support Services Plan.

5. a. The division shall monitor the program and shall designate a Statewide family advocacy organization to administer the program through a coordinator who shall be a full-time employee of that organization working under its direction. The coordinator shall be qualified by training and experience to perform the duties of this position.

b. The coordinator shall, in conjunction with the three regional family working groups and the Statewide family working group established pursuant to section 6 of this act, adopt, review and revise, as needed, a State Family Support Services Plan for Families of Persons with a Serious Mental Illness. The plan shall:

(1) assess needs, establish goals and set priorities for the provision of family support services;

(2) provide for outreach and coordinated delivery of support services; and

(3) identify and obtain additional funding for the program to supplement funds appropriated pursuant to and available for the purposes of this act.

c. The coordinator shall coordinate efforts by public and private agencies and local family advocacy groups. Coordination shall include, but not be limited to, the identification of services provided by different agencies to avoid duplication; planning with all agencies to ensure that gaps in services are filled; and the coordination of activities for receiving and adopting input from local family advocacy groups.

C.30:4-177.48 Family working groups established.

6. a. There are established three regional family working groups which shall consist of representatives from each county within a region. The division shall establish the regions. The regional family working groups shall assess regional needs for family support services and make recommendations to the State-

wide family working group. Members shall be designated by the coordinator in conjunction with the Statewide family advocacy organization. Members shall serve without compensation and shall include a family member of a person with a serious mental illness, a person with a serious mental illness or other representative of a group interested in advocating for persons with serious mental illness and their families.

b. There is established a Statewide family working group which shall consist of three members from each of the regional family working groups in the State. Members shall be designated by the respective regional family working groups and shall serve without compensation. The Statewide family working group members shall monitor the support services from their respective regions and provide recommendations to the coordinator regarding family support services.

C.30:4-177.49 Duties of coordinator.

7. The coordinator, in conjunction with the Statewide family advocacy organization and local family advocacy groups, shall work to expand and establish family support services throughout the State. The coordinator shall, at least annually, report in writing to the Statewide family advocacy organization and the division on the efforts of the regional family working groups to effectuate the purposes of this act.

C.30:4-177.50 Allocation of monies.

8. a. No more than 10% of the monies appropriated pursuant to this act shall be allocated for administrative purposes.

b. The division and any agency funded by the division to provide family support services shall assist families in obtaining all other sources of funding before using funds appropriated pursuant to and available for the purposes of this act.

c. The services provided pursuant to this act shall not supplant any existing rights, entitlements or services for which the family or family member with a serious mental illness may be eligible.

C.30:4-177.51 Family support services considered State benefit.

9. Notwithstanding the provisions of any law to the contrary, the family support services provided pursuant to this act shall be considered a State benefit and shall not be counted as income for the purposes of State taxation or eligibility for other State benefits.

C.30:4-177.52 Rules, regulations.

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

11. There is appropriated $90,000 from the General Fund to the department to effectuate the purposes of this act.

12. This act shall take effect on the 90th day after enactment.

Approved January 5, 1996.

CHAPTER 315

AN ACT concerning the practice of optometry and amending R.S.45:12-9.

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

1. R.S.45:12-9 is amended to read as follows:

Registration; certificates; fees; branch offices; revocation.

45:12-9. Every registered optometrist who practices in the State of New Jersey shall, on such dates and times as the board may determine, pay to the secretary-treasurer of the board a registration renewal fee for which he shall receive a renewal of his registration.

A nonactive registration renewal certificate shall be issued to those not practicing within the State upon payment of a renewal fee, payable to the secretary-treasurer of the board on such dates and times as the board may determine. Should a nonactive registrant desire to practice in New Jersey during the registration year, he shall notify the board in writing of his office location, shall pay the required fee for a change of address and an additional fee to activate his license. He must return his nonactive registration renewal certificate for cancellation. The board shall thereupon issue an active registration certificate to said registrant for his office location.

Every person having an active or nonactive license to practice optometry in New Jersey shall notify the board in writing of any

change of address and pay a fee and return therewith his registration renewal certificate and the board shall issue a new registration renewal certificate.

Every registered optometrist having a nonactive registration renewal certificate for a period of five years or more who desires an active registration certificate shall be required to submit to a practical examination, conducted by the board, and if the results of the examination are satisfactory to the majority of the board, he shall then be issued an active certificate of registration authorizing him to practice in this State.

The board shall have the power to issue, upon proper application and payment of the prescribed fees, branch office registration certificates to active licensees when, in its discretion, and after a proper investigation, it determines that the new branch office complies with the provisions of this chapter and the rules and regulations of the board and that such action serves the public interest.

Every licensee holding an active registration renewal certificate who intends to practice at any place other than the address for which his active registration renewal certificate is issued shall be required to obtain from the secretary-treasurer for a fee a branch office registration certificate for each and every location wherein he practices; provided, that nothing herein contained shall be construed to require an active licensee to obtain a branch office certificate for the purpose of serving on the staff of a hospital or other health care facility licensed by the Department of Health or institution; and further provided, that nothing herein contained shall be construed to require an active licensee to obtain a branch office certificate for the purpose of rendering necessary optometric services to patients confined to their homes, hospitals or other health care facilities licensed by the Department of Health or institutions.

Every licensee holding a branch office registration certificate or certificates shall, on such dates and times as the board may determine, pay to the secretary-treasurer a registration renewal fee for each branch office registration certificate he holds, for which he shall receive a branch office registration renewal certificate or certificates.

In case of default in payment of registration renewal fees by any registered optometrist, his certificate or certificates to practice may be revoked by the board upon 20 days' notice to the last registered address of said optometrist of the time and place of considering such revocation; but the certificate or certificates

shall not be revoked if the person in default pays such fees before or at such time of consideration named by the board.

Branch office registration certificates and branch office registration renewal certificates shall be displayed in the offices for which they are issued as provided for in R.S.45:12-8.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 316

AN ACT concerning health insurance benefits for children and revising parts of statutory law.

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

C.17:48E-35.10 Health service corporation contracts, child screening, blood lead; immunizations.

1. No health service corporation contract providing hospital or medical expense benefits for groups with greater than 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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 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 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 Insurance.

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.

C.17:48-6m Hospital service corporation contracts, child screening, blood lead; immunizations.

2. No hospital service corporation contract providing hospital or medical expense benefits for groups with greater than 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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 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 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 Insurance.

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.

C.17B:27-46.1l Group health insurance policy, child screening, blood lead; immunizations.

3. No group health insurance policy providing hospital or medical expense benefits for groups with more than 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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 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 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 Insurance.

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.

C.26:2J-4.10 Health maintenance organization, child screening, blood lead; 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 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 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 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 Insurance.

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.

5. 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 and contract forms, benefit levels.

6. The board shall establish the policy and contract forms and benefit levels to be made available by all carriers for the policies required to be issued pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4). 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, except that the limitation shall not apply to an individual who has, under a prior group or individual health benefits plan or Medicaid, with no intervening lapse in coverage of more than 30 days, been treated or diagnosed by a physician for a condition under that plan or satisfied a 12-month preexisting condition limitation.

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 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 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 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 section. This section shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

6. 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.§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.

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.).

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.§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-19b., 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 or 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, for two successive 12-month periods commencing with the first 12-month anniversary date occurring after February 28, 1994, notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, 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-19b., 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25 and 17B:27A-27).

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 shall offer coverage to all eligible employees and their dependents within the membership of the association, multiple employer arrangement or out-of-State trust and an association, multiple employer arrangement or out-of-State trust shall not use actual or expected health status in determining its membership.

(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 carrier, association, multiple employer arrangement or out-of-State trust shall not withdraw a health benefits plan marketed to small employers that was in effect on December 31, 1993 without the approval of the commissioner. The commissioner shall approve a request to withdraw a plan only on the grounds that retention of the plan would present a substantial threat to the financial condition of the carrier.

(4) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a health benefits plan in effect on the effective date of P.L.1994, c.11 (C.17B:27A-19.1 et al.) shall remain in effect until the third 12-month anniversary date occurring after February 28, 1994 of that policy or contract and may, at the option of the policy or contract holder, be renewed or continued until the second 12-month anniversary date of that policy or contract occurring after February 28, 1994.

(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 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.

(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 that were covered by the health benefits plan on December 31, 1993, during the period for which such health benefits plan is otherwise authorized to be renewed, continued or reinstated.

(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.).

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 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 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 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 section. This section shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

C.26:2-137.1 Specifications for lead screening of children, immunizations.

7. The Department of Health shall specify by regulation, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.):

a. The lead screening provided for under P.L.1995, c.316 (C.17:48E-35.10 et al.), including the age of the child when initial screening should be conducted, the time intervals between screening, when follow-up testing is required, the methods that shall be used to conduct the lead screening, and the level of lead in the bloodstream that shall be considered to be "lead poisoning"; and

b. The childhood immunizations recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health.

8. This act shall take effect 90 days after the date of enactment.

Approved January 5, 1996.

CHAPTER 317

AN ACT exempting certain radio and television broadcast production equipment from the sales and use tax, amending P.L.1980, c.105.

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

1. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended to read as follows:

C.54:32B-8.13 Sales, use tax exempt, machinery, apparatus, etc.

25. Receipts from the following are exempt from the tax imposed under the Sales and Use Tax Act:

a. Sales of machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining;

b. Sales of machinery, apparatus or equipment for use or consumption directly and primarily in the production, generation, transmission or distribution of gas, electricity, refrigeration, steam or water for sale or in the operation of sewerage systems;

c. Sales of telephones, telephone lines, cables, central office equipment or station apparatus, or other machinery, equipment or apparatus, or comparable telegraph equipment to a service provider subject to the jurisdiction of the Board of Public Utilities or the Federal Communications Commission, for use directly and primarily in receiving at destination or initiating, transmitting and switching telephone, telegraph or interactive telecommunications service for sale to the general public;

d. Sales of machinery, apparatus, equipment, building materials, or structures or portions thereof, used directly and primarily for cogeneration in a cogeneration facility. As used in this subsection, "cogeneration facility" means a facility the primary purpose of which is the sequential production of electricity and steam or other forms of useful energy which are used for industrial or 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. The Director of the Office of Energy in the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and

regulations establishing technical specifications for eligibility for the exemption provided in this subsection;

e. Sales of machinery, apparatus or equipment other than that used in the construction or operation of towers to a commercial broadcaster operating under a broadcasting license issued by the Federal Communications Commission for use or consumption directly and primarily in the production or transmission of radio or television broadcasts.

The exemptions granted under this section shall not be construed to apply to sales, otherwise taxable, of machinery, equipment or apparatus whose use is incidental to the activities described in subsections a., b., c., d. and e. of this section.

The exemptions granted in this section shall not apply to motor vehicles or to parts with a useful life of one year or less or tools or supplies used in connection with the machinery, equipment or apparatus described in this section.

2. This act shall take effect immediately, provided however that section 1 shall remain inoperative until the first day of the third month following enactment.

Approved January 5, 1996.

CHAPTER 318

AN ACT establishing an "Alcohol and Drug Abuse Program for the Deaf, Hard of Hearing and Disabled," amending N.J.S.2C:35-15, supplementing Title 26 of the Revised Statutes and making an appropriation therefor.

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

C.26:2B-36 Findings, declarations relative to alcoholism, drug abuse among the deaf, hard of hearing, disabled.

1. The Legislature finds and declares that: there is growing evidence that people with deafness, hearing loss or other disabilities are at greater risk of being involved with alcohol or other drugs of abuse than the general population; the deaf and hard of hearing have a communication disability which prevents them from receiving and communicating information that would enable them to make more informed decisions about their own use, abuse

or addiction to alcohol and other drugs; and the combined impact of physical impairment, attitudinal and architectural barriers, societal discrimination and the psychological stresses that accompany disability may create a special vulnerability for substance abuse in people with disabilities.

The Legislature further finds and declares that: few rehabilitation centers and professionals working with the deaf, hard of hearing and other disabled persons are adequately prepared or trained to identify, recognize or deal with the signs of substance abuse; and New Jersey needs the development of specialized services for people with disabilities who abuse, misuse and are addicted to alcohol and other drugs.

C.26:2B-37 "Alcohol and Drug Abuse Program for the Deaf, Hard of Hearing and Disabled" established.

2. The Commissioner of Health shall establish an "Alcohol and Drug Abuse Program for the Deaf, Hard of Hearing and Disabled" in consultation with the program advisory committee established pursuant to this section and in consultation with and after review by the Governor's Council on Alcoholism and Drug Abuse.

There is established a program advisory committee to advise the commissioner on the establishment of the "Alcohol and Drug Abuse Program for the Deaf, Hard of Hearing and Disabled." The members of the advisory committee shall be appointed by the commissioner and shall consist of five members who are either deaf, hard of hearing, or disabled, two members of the public with an interest in issues relating to alcohol and drug abuse and one representative each from the Governor's Council on Alcoholism and Drug Abuse, the Developmental Disabilities Council, the Division of Vocational Rehabilitation Services in the Department of Labor and the Division of the Deaf and Hard of Hearing in the Department of Human Services. The commissioner shall serve as an ex officio member of the committee.

C.26:2B-38 Program contents.

3. The program shall include, but not be limited to: providing public awareness of, and developing advocacy efforts for, the deaf and hard of hearing and other disabled persons who are in need of treatment services for alcoholism and drug abuse, and developing treatment modalities and specialized training programs for this population. The commissioner shall incorporate the services of community-based agencies to develop and implement this program.

C.26:2B-39 Rules, regulations.

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

5. N.J.S.2C:35-15 is amended to read as follows:

Mandatory drug enforcement and demand reduction penalties; collection; disposition; suspension.

2C:35-15. a. In addition to any disposition authorized by this title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of or adjudicated delinquent for a violation of any offense defined in this chapter or chapter 36 of this title shall be assessed for each such offense a penalty fixed at:

(1) $3,000.00 in the case of a crime of the first degree;

(2) $2,000.00 in the case of a crime of the second degree;

(3) $1,000.00 in the case of a crime of the third degree;

(4) $750.00 in the case of a crime of the fourth degree;

(5) $500.00 in the case of a disorderly persons or petty disorderly persons offense.

Every person placed in supervisory treatment pursuant to the provisions of N.J.S.2C:36A-1 or N.J.S.2C:43-12 for a violation of any offense defined in this chapter or chapter 36 of this title shall be assessed the penalty prescribed herein and applicable to the degree of the offense charged, except that the court shall not impose more than one such penalty regardless of the number of offenses charged. If the person is charged with more than one offense, the court shall impose as a condition of supervisory treatment the penalty applicable to the highest degree offense for which the person is charged.

All penalties provided for in this section shall be in addition to and not in lieu of any fine authorized by law or required to be imposed pursuant to the provisions of N.J.S.2C:35-12.

b. All penalties provided for in this section shall be collected as provided for collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), and shall be forwarded to the Department of the Treasury as provided in subsection c. of this section.

c. All moneys collected pursuant to this section shall be forwarded to the Department of the Treasury to be deposited in a nonlapsing revolving fund to be known as the "Drug Enforcement

and Demand Reduction Fund." Monies in the fund shall be appropriated by the Legislature on an annual basis for the purposes of funding in the following order of priority: (1) the Alliance to Prevent Alcoholism and Drug Abuse and its administration by the Governor's Council on Alcoholism and Drug Abuse; (2) the "Alcoholism and Drug Abuse Program for the Deaf, Hard of Hearing and Disabled" established pursuant to section 2 of P.L.1995, c.318 (C.26:2B-37); and (3) other alcohol and drug abuse programs.

Moneys appropriated for the purpose of funding the "Alcoholism and Drug Abuse Program for the Deaf, Hard of Hearing and Disabled" shall not be used to supplant monies that are available to the Department of Health as of the effective date of P.L.1995, c.316 (C.26:2B-36 et al.), and that would otherwise have been made available to provide alcoholism and drug abuse services for the deaf, hard of hearing and disabled, nor shall the moneys be used for the administrative costs of the program.

d. (Deleted by amendment, P.L.1991, c.329).

e. The court may suspend the collection of a penalty imposed pursuant to this section; provided the defendant agrees to enter a residential drug rehabilitation program approved by the court; and further provided that the defendant agrees to pay for all or some portion of the costs associated with the rehabilitation program. In this case, the collection of a penalty imposed pursuant to this section shall be suspended during the defendant's participation in the approved rehabilitation program. Upon successful completion of the program, the defendant may apply to the court to reduce the penalty imposed pursuant to this section by any amount actually paid by the defendant for his participation in the program. The court shall not reduce the penalty pursuant to this subsection unless the defendant establishes to the satisfaction of the court that he has successfully completed the rehabilitation program. If the defendant's participation is for any reason terminated before his successful completion of the rehabilitation program, collection of the entire penalty imposed pursuant to this section shall be enforced. Nothing in this section shall be deemed to affect or suspend any other criminal sanctions imposed pursuant to this chapter or chapter 36 of this title.

6. There is appropriated $350,000 from the "Drug Enforcement and Demand Reduction Fund" established pursuant to N.J.S.2C:35-15 to the Department of Health to effectuate the purposes of this act.

7. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 319

AN ACT providing for public access to legislative information in electronic form, and supplementing P.L.1979, c.8 (C.52:11-54 et seq.).

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

C.52:11-78 Legislative information available to public, maintained in electronic form.

1. a. The Office of Legislative Services shall make available to the public and maintain in electronic form the following information:

(1) the most current available compilation of the official text of the statutes of New Jersey;

(2) the text of all bills introduced during the current two-year session of the Legislature, including amended versions, as well as sponsor statements, committee statements, and fiscal notes;

(3) all bills currently pending in the Legislature, listed by subject and sponsor;

(4) bill-tracking data on all bills pending in the Legislature, including the history of actions, current status and, where appropriate, by citation of the section of law to be amended by a bill;

(5) a current calendar of legislative events, including the schedule of legislative committee meetings, and a list of bills scheduled for legislative action;

(6) a current directory of the members of the Legislature, including complete committee membership information;

(7) the text of all chapter laws beginning with laws passed by the Legislature after 12:00 noon, January 9, 1996; and

(8) such other information as the Legislative Services Commission shall direct.

b. The information specified in subsection a. of this section shall be made available to the public through the largest nonproprietary cooperative public computer network.

c. The Office of Legislative Services shall not impose a fee or usage charge as a condition of accessing the information specified

in subsection a. of this section through the network described in subsection b. of this section.

d. The Office of Legislative Services may offer a fee-based electronic legislative information service which may include, in addition to the information specified in subsection a. of this section, the following information and capabilities:

(1) the ability for users to automatically maintain updated private databases and receive notification of scheduled action on specific bills or subject matter;

(2) the ability for users to retrieve information by various means of searching full text; and

(3) archives of bill texts and related information from prior sessions of the Legislature.

e. Nothing contained in this section shall be construed as prohibiting a private individual or entity from using the information specified in subsection a. of this section to provide, either commercially or on a voluntary basis, services similar to those provided by the Office of Legislative Services pursuant to subsection d. of this section.

f. The Office of Legislative Services shall consult with the appropriate office within the executive branch of the State government responsible for computer security and guidelines in order to provide the information specified in subsection a. of this section on the largest nonproprietary cooperative public computer network, and both offices shall take all appropriate security measures, subject to the approval of the Legislative Services Commission or the designee thereof, to protect the computer systems that provide access to and store the information specified in subsection a. of this section.

g. No fee shall be charged to the Office of Legislative Services by the appropriate office within the executive branch of the State government responsible for computer security and guidelines for services rendered related to this act.

2. This act shall take effect immediately but section 1 shall remain inoperative until July 1, 1996.

Approved January 5, 1996.

CHAPTER 320

AN ACT concerning the sale of tobacco products, amending P.L.1966, c.36 and P.L.1948, c.65 and supplementing Title 26 of the Revised Statutes.

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

1. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read as follows:

C.26:2F-7 Special projects and development fund, established; grants.

7. (a) There is hereby established a special projects and development fund which shall consist of all funds appropriated or otherwise made available for the purposes set forth in this section. The commissioner, with the approval of the Public Health Council, may make grants from the special projects and development fund to local health agencies, to hospitals, and to voluntary health agencies to provide State health assistance for new health services and for special health projects in order to stimulate continued development of health services and to assure the citizens of New Jersey the benefits of the most advanced health protection techniques.

(b) Except as provided in subsection (c) of this section, grants from the special projects and development fund for specific purposes shall be made on an annual basis for a period not in excess of five years and such grants shall be in diminishing amounts during this period. The commissioner shall determine the conditions applicable to each such grant including the extent of local financial participation to be required. Grants from the special projects and development fund to voluntary health agencies shall not exceed 40% of said fund.

(c) (1) Grants from the special projects and development fund shall be made on an annual basis to local health agencies for local enforcement efforts concerning the sale and commercial distribution of tobacco products to persons under the age of 18 years, in an amount determined by the commissioner. The grants shall be distributed based on the number of cigarette retail dealer and vending machine licenses issued within a local health agency's jurisdictional authority in order to ensure Statewide coverage and Statewide consistency of enforcement efforts; except that the commissioner may designate up to 5% of available funds, annu-

ally, for incentive grants to local health agencies to enhance enforcement efforts.

Each grant recipient shall report quarterly to the commissioner on the number of compliance check inspections it has completed and the results of those compliance checks. The commissioner shall determine any other conditions applicable to the grants.

(2) Beginning in 1999, notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the commissioner may make grants from the special projects and development fund to public and private local agencies to reduce teenage use of addictive substances.

C.26:3A2-20.1 Sale of tobacco to minors, enforcement; reports.

2. a. The Commissioner of Health is authorized to enforce the provisions of N.J.S.2A:170-51 with respect to the prohibition on the sale and commercial distribution of tobacco products to persons under 18 years of age. The commissioner may delegate the enforcement authority provided in this section to local health agencies, subject to the availability of sufficient funding. The commissioner shall report quarterly to the Legislature on the enforcement program's progress, use of grants awarded pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7), results of enforcement efforts and other matters the commissioner deems appropriate.

b. The Department of the Treasury shall provide the commissioner with information about retail tobacco dealer licensees necessary to carry out the purpose of this section.

3. Section 202 of P.L.1948, c.65 (C.54:40A-4) is amended to read as follows:

C.54:40A-4 License; issuance, fees.

202. a. All licenses shall be issued by the director, who shall make rules and regulations respecting applications therefor and issuance thereof.

b. The following individuals related to distributors, wholesale dealers, retail dealers operating more than nine cigarette vending machines, and retail dealers who sell cigarettes at retail at more than nine premises shall submit with applications for a license, fingerprints, which shall be processed through the Federal Bureau of Investigation and the New Jersey State Police, and such other information as the director may require:

(1) Individuals having any interest whatsoever in a proprietorship or company.

(2) Partners of a partnership, regardless of percentage.

(3) Joint venturers in a joint venture.

(4) Officers, directors, and all stockholders holding directly or indirectly a beneficial interest in more than 5% of the outstanding shares of a corporation.

(5) Employees receiving in excess of $30,000.00 per annum compensation whether as salary, commission, bonus or otherwise and persons who, in the judgment of the director are employed in a supervisory capacity or have the power to make or substantially affect discretionary business judgments of the applicant entity with regard to the cigarette business.

(6) Other persons who the director establishes have the ability to control the applicant entity through any means including but not limited to, contracts, loans, mortgages or pledges of securities where such control is inimical to the policies of this act because such person is a career offender or a member of a career offender cartel as defined in paragraph (2) of subsection e. of this section. Individuals licensed pursuant to the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.) shall only be required to produce evidence of said licensure in satisfaction of the foregoing.

The provisions in this subsection as to wholesale dealers, retail dealers operating more than nine cigarette vending machines, and retail dealers who sell cigarettes at retail at more than nine premises do not apply to retail grocery stores and supermarkets primarily engaged in the self-service sale of foods and household supplies for off-premises consumption or to restaurants, hotels and motels operated by national corporations with such premises in six or more states and primarily engaged in the sale of foods for retail consumption or in the rental of rooms for lodging.

c. The director shall not issue any license under this act where he has reasonable cause to believe that anyone required to submit information under this act has willfully withheld information requested of him for the purpose of determining the eligibility of the applicant to receive a license or where the director has reasonable cause to believe that information submitted in the application is false and misleading and is not made in good faith.

d. The director shall not issue any license under this act where he has reasonable cause to believe that anyone required to be licensed or anyone required to submit information under this act, has been convicted of any offense in any jurisdiction which would be at the time of conviction a crime involving moral turpitude.

It is further provided that any applicant or person required to submit information who has a charge pending pursuant to any of the foregoing shall disclose that fact to the director. The director may then withhold action on new applications or, in the case of an application for the renewal of a license, issue a temporary license until there has been a disposition of the charge. The director shall have the discretion to waive the prohibition against licensure herein provided upon the presentation of proof that a period of not less than five years has elapsed since the last conviction or the expiration of any period of incarceration imposed with respect thereto.

e. The director shall not issue any license where the applicant or anyone required to submit information has been identified as a career offender or a member of a career offender cartel in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policies of this act or to the taxation, distribution, and sale of cigarettes within the State. The director may request the Attorney General for advice respecting whether a person is a "career offender" within the meaning of this subsection, or is a "contumacious defiant" within the meaning of subsection f. of this section.

As used in this subsection:

(1) "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and (2) "career offender cartel" means any group of persons who operate together as career offenders.

f. The director shall not issue any license where the applicant or anyone required to submit information has been found to be contumaciously defiant before any legislative investigative body or other official investigative body of this State or of the United States when such body is engaged in the investigation of organized crime, official corruption or the cigarette industry itself.

g. Each such license shall lapse on March 31 of the period for which it is issued, and each such license shall be continued annually upon the conditions that the licensee shall have paid the required fee and complied with all the provisions of this act and the rules and regulations of the director made pursuant thereto.

h. For each license issued to a distributor there shall be paid to the director a fee of $350.00. If a distributor sells or intends to sell cigarettes at two or more places of business, whether estab-

lished or temporary, a separate license shall be required for each place of business. Each license, or certificate, thereof, and such other evidence of license shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the director. The director shall require each licensed distributor to file with him a bond in an amount not less than $6,000.00 to guarantee the proper performance of his duties and the discharge of his liabilities under this act. The bond shall be executed by such licensed distributor as principal, and by a corporation approved by the director and duly authorized to engage in business as a surety company in the State of New Jersey, as surety. The bond shall run concurrently with the distributor's license.

For each license issued to a manufacturer, and for each continuance thereof, there shall be paid to the director a fee of $10.00.

For each license issued to a manufacturer's representative, and for each continuance thereof, there shall be paid to the director a fee of $5.00.

For each license issued to a wholesale dealer there shall be paid to the director a fee of $250.00. If a wholesale dealer sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license shall be required for each place of business. Each license, or certificate thereof, and such other evidence of license shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the director.

For each license issued to a retail dealer and for each continuance thereof, excepting a retail dealer operating a cigarette vending machine, there shall be paid to the director a fee of $40 in 1996 and $50 in 1997 and each year thereafter. For each license issued to a retail dealer operating a vending machine for the sale of cigarettes and for each continuance thereof, there shall be paid to the director a fee of $40 in 1996 and $50 in 1997 and each year thereafter. Of the license fee of $40 and $50, respectively, $30 shall be credited in 1996 and $40 shall be credited in 1997 and each year thereafter to the special projects and development fund in the Department of Health established pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes specified therein, and $5 shall be credited each year beginning 1996 to the division for administrative costs associated with the requirements established pursuant to subsection i. of this section and section 2 of P.L.1995, c.320 (C.26:3A2-20.1). The director shall determine

and certify to the State Treasurer on a monthly basis the amount of revenues collected by the director which are to be credited to the special projects and development fund in the Department of Health.

If a retail dealer sells or intends to sell cigarettes at two or more places of business, whether established or temporary, or whether in the same building or not, a separate license shall be required for each place of business. Each vending machine for the sale of cigarettes shall be separately licensed and be deemed a separate place of business. Each license, or certificate thereof, and such other evidence of license shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the director.

Any person licensed only as a distributor or as a manufacturer or as a manufacturer's representative or as a wholesale dealer or as a retail dealer shall not operate in any other capacity except under that for which he is licensed herein, unless the appropriate license or licenses therefor are first secured.

For each license issued to a consumer and for each continuance thereof there shall be paid to the director a fee of $1.00. Each license, or certificate thereof, or such other evidence of license as may be prescribed by the director, shall be so kept by the consumer as to be readily available for inspection.

No license shall be issued to any person except upon the payment of the full fee therefor, any statute or exemption to the contrary notwithstanding. No license shall be assignable or transferable, except as hereinafter provided, but in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if for any other reason whatsoever the business of the licensee shall devolve upon another by operation of law, the director may, in his discretion, extend said license for a limited time to the executor, administrator, trustee, receiver, or person upon whom the same has devolved. A purchaser or assignee of a licensed wholesaler or licensed distributor, or any other person upon whom the business of a licensed wholesaler or licensed distributor shall devolve by operation of law, shall upon application to the director, be entitled to an assignment or transfer of the wholesale or distributor license for the balance of the existing license period upon payment of a transfer fee of $5.00 and subject to his qualification to be a licensed wholesaler or licensed distributor under the provisions of this act. The license issued for each vending machine for the sale of cigarettes may be transferred from machine to machine in the same ownership. No refund of the license fee shall be paid

to any person upon the surrender or revocation of any license except a license fee paid or collected in error. But, upon payment of a $1.00 fee, there may be obtained (1) a duplicate license, or certificate thereof, in the event the original is lost, destroyed or defaced, and (2) an amended license, or certificate thereof, upon a change in the location of the place of business of any distributor or dealer.

i. The director shall require an applicant for a cigarette retail dealer license, including a license to operate a vending machine for the sale of cigarettes, to include on the application the address of the place of business where the cigarettes will be sold or the address where the vending machine will be located, as the case may be.

If the place of business or the vending machine is moved to a different address than that provided on the license application, the licensee shall notify the director within 30 days of the change of address.

4. This act shall take effect January 1, 1996.

Approved January 5, 1996.

CHAPTER 321

AN ACT concerning mental health programs and supplementing P.L.1957, c.146 (C.30:9A-1 et seq.) and chapter 2H of Title 26 of the Revised Statutes.

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

C.30:9A-18 Definitions relative to mental health programs.

1. As used in sections 1 through 4 of this act:

"Commissioner" means the Commissioner of Human Services.

"Mental health program" means a program of mental health services which is subject to regulations adopted by the commissioner. The program may be public or private, hospital-based or non-hospital-based, incorporated or unincorporated, and for profit or nonprofit.

C.30:9A-19 Requirements for conducting, maintaining, operating mental health program.

2. A person shall not conduct, maintain or operate a mental health program unless: a. the commissioner has issued a license to that person, in accordance with rules and regulations adopted by the commissioner which prescribe standards for the provision of services by a mental health program; and b. that person has a purchase of service contract or an affiliation agreement with the Division of Mental Health Services in the Department of Human Services.

C.30:9A-20 Construction of act.

3. Nothing in this act shall be construed to:

a. limit the authority of the Department of Health with respect to the licensure of a health care facility pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), regardless of whether the facility operates a separate psychiatric unit or service, or an alcohol treatment facility pursuant to P.L.1975, c.305 (C.26:2B-7 et seq.), or the issuance of a certificate of approval to a narcotic and drug abuse treatment center pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.);

b. require the licensure of any facility or center referenced in subsection a. of this section by the Department of Human Services; or

c. require licensure of a mental health agency which does not provide a mental health program that is subject to regulations adopted by the commissioner.

C.30:9A-21 Rules, regulations.

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

C.26:2H-12a Requirements for licensure of mental health program satisfied.

5. A license issued to a mental health program by the Commissioner of Human Services pursuant to P.L.1995, c.321 (C.30:9A-18 et al.) shall be deemed to satisfy the requirements for licensure of a health care facility by the Department of Health pursuant to section 12 of P.L.1971, c.136 (C.26:2H-12) for those mental health programs, and for payment by a purchaser of health care services pursuant to section 18 of P.L.1971, c.136 (C.26:2H-18).

6. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 322

AN ACT concerning child support enforcement amending R.S.54:50-9, and supplementing Chapter 17 of Title 2A of the New Jersey Statutes.

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

C.2A:17-56.34 Putative fathers, child support obligors; information sources.

1. The county probation department, the State IV-D agency and its designees shall be authorized to receive information concerning putative fathers and child support obligors from the following sources through electronic or other appropriate means:

a. To the extent permitted by R.S.54:50-9, records of the Division of Taxation in the Department of the Treasury containing information concerning an obligor's income or assets;

b. Direct, on-line access to the Division of Motor Vehicles' records, including, where possible, interface between automated systems;

c. Any record, paper, document or entity deemed by the probation department, the IV-D agency or its designee to be a potential source of information concerning an obligor's income or assets. In order to obtain information pursuant to this subsection, the probation department and the IV-D agency shall have the authority, as designated by the Commissioner of the Department of Human Services, to compel the production of books, papers, accounts, records and documents by subpoena;

d. State lottery prize payments in excess of $600 made by the Department of the Treasury;

e. Record of a judgment or settlement of any civil action where a party is entitled to receive a monetary award made by the court; and

f. Record of an out-of-court settlement.

C.2A:17-56.35 Public utility records as source; exemptions.

2. a. If the State IV-D agency and its designees are unable to obtain information pursuant to section 1 of this act, then the agency and its designees may seek verifying information from public utility records. Such information shall be limited to identifying information necessary to establish the name and address, or residency, if different from the address, of putative fathers and child support obligors.

b. A public utility shall not be liable for damages for any civil action which may result from complying with the provisions of this act.

c. A long distance carrier shall be exempt from the provisions of this act.

3. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9 Nothing herein contained shall be construed to prevent:

a. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this subtitle or of any such State tax law;

b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

c. The commissioner, in his discretion and subject to reasonable conditions imposed by him, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the commissioner, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the commissioner, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the Director of the Division of Taxation to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub. L.93-647 (42 U.S.C.§ 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 of the Division of Taxation to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.).

j. The furnishing by the Director of the Division of Taxation to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes.

C.2A:17-56.36 Rules, regulations.

4. The Commissioner of Human Services shall, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in conjunction with the Supreme Court, the Division of Motor Vehicles, the Administrative Office of the Courts and the Department of the Treasury, adopt and promulgate such rules and regulations as may be necessary for the implementation of this act, including, but not limited to: the protection of the confidential use of the information concerning putative fathers and child support obligors to safeguard against the unauthorized use, disclosure or publication of the information; and, the establishment of penalties for those cases in which the information is improperly used, disclosed or published beyond the purposes of this act.

5. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 323

AN ACT concerning the Pharmaceutical Assistance to the Aged and Disabled program and supplementing P.L.1975, c.194 (C.30:4D-20 et seq.).

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

C.30:4D-22.2 "Prescription drugs," syringes, needles included; certain.

1. In addition to the "prescription drugs" defined pursuant to section 3 of P.L.1975, c.194 (C.30:4D-22), "prescription drugs" also means syringes and needles for injectable medicines used for the treatment of multiple sclerosis.

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

Approved January 5, 1996.

CHAPTER 324

AN ACT concerning guardianship services for persons with developmental disabilities, amending and supplementing P.L.1985, c.133, and repealing section 5 of P.L.1990, c.50.

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

1. Section 8 of P.L.1985, c.133 (C.30:4-165.13) is amended to read as follows:

C.30:4-165.13 Review of prior guardianships.

8. The commissioner shall review the case of every person who received guardianship services without prior judicial review before the effective date of P.L.1985, c.133 (C.30:4-165.4 et al.). If the need for a guardian appears to continue, the commissioner shall apply to the Superior Court upon notice to the alleged mental incompetent for the appointment of a guardian of the person in the same manner as provided in section 1 of P.L.1970, c.289 (C.30:4-165.7), unless another application is pending. If, as a result of the commissioner's review, it appears that the person is

no longer in need of a guardian, the provision of guardianship services shall be discontinued, and this disposition shall be documented in the records of the Division of Developmental Disabilities. For those persons who received guardianship services without prior judicial review before the effective date of P.L.1985, c.133 (C.30:4-165.4 et al.), the division shall continue to provide these services until final disposition resulting from the commissioner's review, either through a court determination regarding the commissioner's application for appointment of a guardian or an administrative termination of guardianship services; and this interim provision of services shall be equivalent to exercising the same responsibility and authority as a guardian of the person, in accordance with the provisions of section 1 of P.L.1985, c.133 (C.30:4-165.4).

Upon the receipt of a complaint for the appointment of a guardian, the court shall appoint an attorney where the alleged mental incompetent is not represented by an attorney. The attorney, after conducting an investigation into the matter, which shall include an interview with the alleged mental incompetent, an interview with the proposed guardian, and, if there is cause to question the alleged incompetent's level of functioning and need for a guardian, the report of an independent expert professionally qualified to render an opinion on issues pertaining to incompetency, shall advise the court by way of a report in affidavit form whether there is cause to dispute either the contention of the commissioner that the appointment of a guardian is necessary or the commissioner's recommendation as to whom that guardian should be. If the alleged mental incompetent expresses an opinion on the subject, the attorney shall advise the court of that opinion. The facts contained in the report of the attorney shall be sworn to or verified in a manner as prescribed by the court.

If, after reviewing the report of the attorney, there appears to be no difference between the position of the commissioner and the findings of the attorney, the court may proceed in a summary fashion to appoint a guardian. A plenary hearing shall be held if requested by the alleged mental incompetent, his attorney, or anyone acting on his behalf.

Repealer.

2. Section 5 of P.L.1990, c.50 (C.30:4-165.5a) is repealed.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 325

AN ACT concerning card and other electronic based payments for obligations and fines owed local units and courts and supplementing chapter 5 of Title 40A and Title 2B of the New Jersey Statutes.

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

C.40A:5-43 Short title.

1. This act shall be known and may be cited as the "Government Electronic Payment Acceptance Act."

C.40A:5-44 Definitions relative to card or other electronic based payments.

2. As used in this act:

"Association" means an organization whose members are issuers.

"Cardholder" means the person or organization named on the face of a credit card or debit card to whom or for whose benefit the credit card or debit card is issued by an issuer.

"Card based payment" means a monetary obligation tendered by the user of a credit card or debit card.

"Card payment system" means a technical procedure by which obligations owed a local unit or court may be paid by credit card or debit card.

"Credit card" means any instrument or device linked to an established line of credit, whether known as a credit card, charge card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in satisfying outstanding financial obligations, obtaining money, goods, services or anything else of value on credit.

"Debit card" means any instrument or device, whether known as a debit card, automated teller machine card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value through the electronic authorization of a financial institution to debit the cardholder's account.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering,

instructing or authorizing a financial institution to debit or credit an account.

"Electronic funds transfer system" means a technical procedure by which obligations owed to or collected by the Supreme Court, the Superior Court, Tax Court or a local unit may be paid by an electronic transaction between the financial institution of the person or organization owing the obligation and the financial institution of the governmental entity.

"Issuer" means the business organization or financial institution which issues a credit card or debit card, or its duly authorized agent.

"Local unit" means any unit of government subject to the provisions of chapter 5 or 5A of Title 40A of the New Jersey Statutes, and the constituent parts of those units, including but not limited to independent local authorities, public libraries, municipal courts and joint municipal courts.

"Service charge" means a fee charged by the Supreme Court, the Superior Court, Tax Court or local unit in excess of the total obligation owed by a person or organization to offset processing charges or discount fees for the use of a card payment system or an electronic funds transfer system.

C.40A:5-45 Electronic payment systems established by resolution of governing body.

3. Subject to the provisions of sections 5 and 6 of P.L.1995, c.325 (C.40A:5-47 and C.2B:1-5), a local unit may establish a card payment system or electronic funds transfer system upon passage of a resolution of the governing body. The resolution shall specify those types of charges, taxes, fees, assessments, fines, or other obligations approved for card based or electronic funds transfer payment, except that credit card payment shall not be authorized for the payment of delinquent local unit obligations or for the redemption of local unit liens.

C.40A:5-46 Service charges; collection, assessment.

4. Notwithstanding the provisions of any other law to the contrary and if not legally prohibited by an association or by an issuer, local units are authorized to assess and collect service charges related to obligations owed to or collected by the local unit when credit cards, debit cards or electronic funds transfer systems are utilized.

C.40A:5-47 Rules, regulations.

5. The director, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate such rules and regulations as are necessary to effectuate the purposes of sections 2 through 4 of P.L.1995, c.325 (C.40A:5-44 through C.40A:5-46).

C.2B:1-5 Electronic payment systems established by courts.

6. a. Notwithstanding the provisions of any other law to the contrary, the Supreme Court, the Superior Court and the Tax Court, and the various municipal and joint municipal courts when permitted by resolution of the appropriate municipal governing bodies, are authorized to establish systems to accept the payment of civil and criminal fines and penalties and other judicially imposed financial obligations by card based payment, electronic funds transfer, or any other method deemed feasible by the Supreme Court.

b. No person or organization that is a defendant in a criminal matter shall be entitled to offer a credit card for the payment of bail or for the payment of fines or penalties related to the imposition of a sentence, for a crime of the first, second or third degree under Title 2C of the New Jersey Statutes.

c. If not legally prohibited by an association or by an issuer, any court is authorized to assess and collect service charges related to obligations owed to or collected by the court when credit cards, debit cards or electronic funds transfer systems are utilized.

d. The Supreme Court of the State of New Jersey shall adopt Rules of Court appropriate or necessary to effectuate the purposes of this section.

7. This act shall take effect immediately except for section 3, which shall take effect upon the adoption of the rules and regulations required in section 5 of this act, and section 6, which shall take effect upon the adoption of the Rules of Court required to implement that section.

Approved January 5, 1996.

CHAPTER 326

AN ACT concerning certain lien foreclosure complaints and amending R.S.54:5-87 and P.L.1948, c.96.

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

1. R.S.54:5-87 is amended to read as follows.

Jurisdiction of court; effect of judgment.

54:5-87. The Superior Court, in an action to foreclose the right of redemption, may give full and complete relief under this chapter, in accordance with other statutory authority of the court, to bar the right of redemption and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, except subsequent municipal liens, and to adjudge an absolute and indefeasible estate of inheritance in fee simple, to be vested in the purchaser. The judgment shall be final upon the defendants, their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest and no application shall be entertained to reopen the judgment after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit. Such judgment and recording thereof shall not be deemed a sale, transfer, or conveyance of title or interest to the subject property under the provisions of the "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq.

In the event that any federal statute or regulation requires a judicial sale of the property in order to debar and foreclose a mortgage interest or any other lien held by the United States or any agency or instrumentality thereof, then the tax lien may be foreclosed in the same manner as a mortgage, and the final judgment shall provide for the issuance of a writ of execution to the sheriff of the county wherein the property is situated and the holding of a judicial sale as in the manner of the foreclosure of a mortgage.

2. Section 6 of P.L.1948, c.96 (C.54:5-104.34) is amended to read as follows:

C.54:5-104.34 Time for institution of action.

6. No action may be instituted under this act on any tax sale certificate unless:

a. More than six months have expired from the date of the tax sale out of which any such certificate arose; and

b. All or any portion of the general land taxes levied and assessed against the land for 21 months next preceding the commencement of the action, other than those subject to payment by installments authorized by a resolution adopted pursuant to R.S.54:5-65, remains unpaid.

Such action on a tax sale certificate may include the lien for unpaid taxes, utility liens or any other municipal liens in conjunction with or independent of one another.

3. Section 36 of P.L.1948, c.96 (C.54:5-104.64) is amended to read as follows:

C.54:5-104.64 Form and effect of judgment.

36. (a) The judgment shall give full and complete relief, in accordance with the provisions of this act, and in accordance with any other statutory authority, to bar the right of redemption, and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, and to adjudge an absolute and indefeasible estate of inheritance in fee simple in the lands therein described, to be vested in the plaintiff.

(b) Such judgment shall be binding and final upon all persons having a vested or contingent title or interest in or lien or claim upon or against said lands, including the State of New Jersey, and any agency and political subdivision thereof, and their heirs, devisees and personal representatives, and their, or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, notwithstanding any infancy or incompetency of such person or persons, and upon all other persons, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest.

(c) In the event that any federal statute or regulation requires a judicial sale of the property in order to debar and foreclose a mortgage interest or any other lien held by the United States or any agency or instrumentality thereof, then the tax lien may be foreclosed in the same manner as a mortgage, and the final judgment shall provide for the issuance of a writ of execution to the sheriff of the county wherein the property is situated and the holding of a judicial sale as in the manner of the foreclosure of a mortgage.

4. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 327

AN ACT concerning bilingual education, amending and supplementing P.L.1974, c.197.

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

1. Section 8 of P.L.1974, c.197 (C.18A:35-22) is amended to read as follows:

C.18A:35-22 Notification of parents; involvement in programs.

8. Each school district shall notify by mail the parents of the pupils of limited English-speaking ability of the fact that their child has been identified as eligible for enrollment in a program of bilingual education. Such notice shall include the information that the parents have the option of declining enrollment of their child in a bilingual program, and they shall be given an opportunity to decline enrollment if they so choose. The notice shall be in writing and in the language of which the child of the parents so notified possesses a primary speaking ability, and in English. In addition, whenever a school district determines, on the basis of a pupil's level of English proficiency, that a pupil should exit from a program of bilingual education the district shall notify the parents of the pupil by mail.

The board shall provide for the maximum practicable involvement of parents of children of limited English-speaking ability in the development and review of program objectives and dissemination of information to and from the local school districts and communities served by the bilingual education program within existing State law.

C.18A:35-22.1 Removal of pupil from bilingual education program.

2. A parent or guardian may remove a pupil who is enrolled in a bilingual education program at any time; except that during the first three years of a pupil's participation in a bilingual education program, a parent or guardian may only remove the pupil at the end of each school year. If a parent or guardian wishes to remove the pupil prior to the end of each school year, the removal shall be approved by the county superintendent of schools. If the county superintendent determines that the pupil should remain in the bilingual education program until the end of the school year, the parent may appeal the county superintendent's decision to the Commissioner of Education, or his designee, pursuant to the provisions of section 2 of P.L.1991, c.12 (C.18A:35-19.2). The

commissioner's decision shall be rendered within 30 days of the filing of the appeal.

3. This act shall take effect on July 1 next following the date of enactment.

Approved January 5, 1996.

CHAPTER 328

AN ACT requiring screening of children for lead exposure, amending P.L.1985, c.84, supplementing Title 26 of the Revised Statutes and making an appropriation therefor.

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

C.26:2-137.2 Findings, declarations relative to lead exposure of children.

1. The Legislature finds and declares that:

a. According to the New Jersey Department of Health, 630,000 children under the age of six are at risk of lead poisoning in New Jersey and should be screened for elevated lead levels. Of this number, the Department of Health estimates that 177,000 pre-school children are at particularly high risk of lead poisoning;

b. Approximately 70,000 pre-school children, or almost 10% of the population of children under age six, are currently screened for lead poisoning;

c. Screening is an essential element of the fight to reduce and eventually eliminate childhood lead poisoning, and identification of children in the early stages of lead exposure can prevent children from suffering severe cases of lead poisoning;

d. A universal lead screening program will identify which children require medical evaluation and treatment and will alert parents about the need to identify lead hazards in their home;

e. A universal lead screening program that is integrated with education and community outreach programs will raise public consciousness about the insidious dangers of childhood lead poisoning, and encourage parents to take preventive steps to make their homes lead-safe and communities to strengthen lead prevention programs; and

f. Universal lead screening and the universal reporting of lead test results will provide the Department of Health and local boards of health with information on high risk neighborhoods and communities and can result in targeted lead hazard reduction programs in the areas of greatest need.

C.26:2-137.3 Definitions relative to lead exposure.

2. As used in this act:

"Commissioner" means the Commissioner of Health;

"Department" means the Department of Health;

"Lead poisoning" means an elevated level of lead in the bloodstream, as established by regulation of the department pursuant to this act;

"Lead screening" means the application of a detection technique to measure a child's blood lead level and determine the extent of a child's recent exposure to lead.

C.26:2-137.4 Lead screening performed; requirements.

3. a. A physician or registered professional nurse, as appropriate, shall perform lead screening on each of his patients under six years of age to whom he provides health care services unless the physician or registered professional nurse has knowledge that the child has already undergone lead screening in accordance with the requirements of this act. If the physician or registered professional nurse or his staff cannot perform the required lead screening, the physician or registered professional nurse may refer the patient, in writing, to another physician or registered professional nurse, health care facility or designated agency or program which is able to perform the lead screening.

b. A health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) which serves children and any other agency or program that serves children and that is designated by the commissioner to perform lead screening, shall perform lead screening on each child under six years of age that the facility, agency or program serves, unless the facility, agency or program has knowledge that the child has already undergone lead screening in accordance with the requirements of this act. If the health care facility cannot perform the required lead screening, the health care facility may refer the patient, in writing, to another health care facility, physician, registered professional nurse, or other designated agency or program which is able to perform the lead screening.

c. If a physician, registered professional nurse, or health care facility, agency or program receives laboratory test results that indicate that a child has lead poisoning, the physician, registered

professional nurse, or health care facility, agency or program shall notify, in writing, the parent or guardian of the child about the test results and provide the parent or guardian with an explanation in plain language of the significance of lead poisoning. The physician, registered professional nurse, or health care facility, agency or program also shall take appropriate measures to ensure that siblings or other members of the household who are under the age of six are or have been screened for lead exposure.

d. A physician, registered professional nurse, or health care facility, agency or program shall not be required to conduct lead screening under this act if the parent or guardian of the child objects to the testing in writing.

e. The department shall specify, by regulation, the lead screening required under this act, including the age of the child when initial screening shall be conducted, the time intervals between screening, when follow-up testing is required, and the methods that shall be used to conduct the lead screening.

f. The department shall develop a mechanism, such as distribution of lead screening record cards or other appropriate means, by which children who have undergone lead screening can be identified by physicians, registered professional nurses and health care facilities, agencies and programs that perform lead screening so as to avoid duplicate lead screening of children.

g. The department shall conduct a public information campaign to inform parents of young children, physicians, registered professional nurses and other health care providers of the lead screening requirements of this act.

h. The department, to the greatest extent possible, shall coordinate payment for lead screening required pursuant to this act with the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and other federal children's health programs so as to ensure that the State receives the maximum amount of federal financial participation available for the lead screening services provided pursuant to this act.

C.26:2-137.5 Blood samples; collection, testing.

4. a. All lead screening blood samples collected by a physician, registered professional nurse or a health care facility pursuant to this act shall be sent to a laboratory licensed by the Department of Health, pursuant to the "New Jersey Clinical Laboratory Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.), for analysis of blood lead levels.

b. A laboratory which performs a lead screening test pursuant to this act shall report the test results to the department, the local health department in the municipality in which the child who is the subject of the test resides, and the physician, registered professional nurse or health care facility, agency or program that submitted the specimen, within five business days of obtaining the test result.

C.26:2-137.6 Central data base maintained; confidentiality.

5. a. The department shall maintain a central data base which shall include a record of all lead screening conducted pursuant to this act. The data base shall include the name, age and address of the child screened and any other demographic data the department deems necessary. The data base shall be geographically indexed in order to determine the location of areas of relatively high incidence of lead poisoning.

b. The information reported to and compiled by the department pursuant to this act is to be used only by the department and such other agencies as may be designated by the commissioner and shall not otherwise be divulged or made public so as to disclose the identity of any child to whom it relates without written parental consent; and to that end, the information shall not be included under materials available to public inspection pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.). The department may, however, make such statistical reports available using information compiled from the data base if the name or other identifying information of the child screened is not revealed.

C.26:2-137.7 Rules, regulations.

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

7. Section 6 of P.L. 1985, c.84 (C.26:2-135) is amended to read as follows:

C.26:2-135 Annual report.

6. The commissioner shall issue an annual report to the Governor and the Legislature by October 1 of each year. The report shall include a summary of the lead poisoning testing and abatement program activities in the State during the preceding fiscal year and any recommendations or suggestions for legislative consideration.

This report shall be made available to local and State agencies involved with case management and lead abatement, and to interested members of the public.

8. There is appropriated $95,000 from the General Fund to the Department of Health to carry out the purposes of this act.

Repealer.

9. Section 4 of P.L.1985, c.84 (C.26:2-133) is repealed.

10. This act shall take effect on the 60th day after the date of enactment.

Approved January 5, 1996.

CHAPTER 329

AN ACT establishing the New Jersey Horse Racing Injury Compensation Board and supplementing chapter 15 of Title 34 of the Revised Statutes.

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

C.34:15-129 Short title.

1. This act shall be known and may be cited as the "New Jersey Horse Racing Injury Compensation Board Act."

C.34:15-130 Findings, declarations.

2. The Legislature finds and declares that, whereas current law already requires virtually all employers to provide for the payment of workers' compensation benefits to injured employees, because of the unique nature of the horse racing industry, difficulties have arisen in ensuring that coverage is provided to employees. For example, out-of-State horse owners are sometimes unaware of their obligation to provide such coverage, or because a jockey may ride the horses of more than one owner, there may be confusion as to who the responsible employer is. As a result, serious injuries have been sustained for which there is no coverage.

It is, therefore, in the public interest to ensure that workers' compensation coverage is available to persons employed in the thoroughbred and standardbred horse racing industries in New Jersey by collectively securing workers' compensation insurance coverage for such persons, the costs of which shall be funded by the horse racing industry, and the assessments for funding that

coverage shall be calculated separately for the thoroughbred and standardbred industries, based on their respective experience.

C.34:15-131 Definitions regarding the New Jersey Horse Racing Injury Compensation Board.

3. As used in this act:

"Board" means the New Jersey Horse Racing Injury Compensation Board established by section 4 of this act.

"Commission" means the New Jersey Racing Commission established pursuant to section 1 of P.L.1940, c.17 (C.5:5-22).

"Horse racing industry employee" means a jockey, jockey apprentice, exercise rider, driver, and driver-trainer performing services for an owner in connection with the exercising or racing of a horse in New Jersey. In addition, a trainer who otherwise would be considered an employee of the owner pursuant to R.S.34:15-1 et seq. is a horse racing industry employee, for the purposes of this act.

C.34:15-132 "New Jersey Horse Racing Injury Compensation Board" established.

4. There is hereby established the "New Jersey Horse Racing Injury Compensation Board," which shall be in, but not of, the Department of Law and Public Safety.

a. The board shall consist of six members as follows: the Commissioner of Insurance, or his designee; the Attorney General, or his designee; one member of the New Jersey Racing Commission elected by the members of the commission, or his designee; and three members of the horse racing industry appointed by the Governor, one of whom shall represent the thoroughbred industry, one of whom shall represent the standardbred industry and one of whom shall represent the racetrack owners. In making these appointments, the Governor shall take into consideration the recommendations of the thoroughbred and standardbred industries and the racetrack owners, respectively.

b. Members of the board shall serve without compensation but may be reimbursed for their expenses out of the administrative funds of the board.

c. The affirmative vote of at least four members shall constitute a majority for the transaction of any business and a quorum shall consist of a simple majority.

C.34:15-133 Powers of board.

5. The board shall have the power to:

a. purchase and serve as the master policyholder for any insurance, or self-insure pursuant to R.S.34:15-77, for the purposes of this act;

b. enter into contracts with other persons, entities or public bodies for any professional, administrative or other services, including legal counsel if approved by the Attorney General, as may be necessary to carry out the duties of the board and the purposes of this act;

c. assess, collect and disburse all money due or payable to or by the board, or authorize such collection and disbursement;

d. invest moneys held in trust under any fund in investments which are approved by the State Investment Council for the investment of surplus moneys of the State;

e. approve assessments, surplus, limits of coverage, limits of excess or reinsurance, coverage documents and other financial and operating policies of the board;

f. 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; and

g. take all actions necessary to carry out the provisions of this act.

C.34:15-134 Insurance coverage; assessments.

6. a. The board shall secure workers' compensation insurance coverage for horse racing industry employees.

b. The board shall assess and collect sufficient funds to pay the costs of the insurance or self insurance coverage required by this act and by the workers' compensation laws of this State and to pay any additional costs necessary to carry out its other duties. The board shall ascertain the total funding necessary, establish the sums that are to be paid and establish by regulation the method of assessing and collecting these moneys. Assessments shall include, but shall not be limited to, deductions from gross overnight purses paid to owners, so long as such deductions do not exceed 3% of such purses, and additional assessments may be collected from horse owners as needed. Track owners shall not be assessed for such costs.

c. Assessments for workers' compensation insurance coverage pursuant to this act shall be calculated and allocated separately for the thoroughbred and standardbred industries, based on their respective loss experience, and any assessments pursuant to subsection b. of this section shall be allocated accordingly. No public funds, other than the moneys collected pursuant to subsection b. of this section, shall be used for the purpose of self insurance or for paying the costs of workers' compensation insurance or workers' compensation benefits pursuant to this act.

C.34:15-135 Employee, employer relationship under the act.

7. a. For the purposes of this act and R.S.34:15-36, a horse racing industry employee shall be deemed to be in the employment of the New Jersey Horse Racing Injury Compensation Board and in the employment of all owners who are licensed or required to be licensed by the commission at the time of any occurrence for which workers' compensation benefits are payable pursuant to R.S.34:15-1 et seq. as supplemented by this act, and not solely in the employment of a particular owner. A horse racing industry employee shall not be deemed to be in the employment of the New Jersey Horse Racing Injury Compensation Board for any other purpose.

b. For the purposes of this act and R.S.34:15-36, the New Jersey Horse Racing Injury Compensation Board and all owners who are licensed or required to be licensed by the commission shall be deemed the employer of a horse racing industry employee at the time of any event for which workers' compensation benefits are payable pursuant to R.S.34:15-1 et seq. as supplemented by this act. The New Jersey Racing Injury Compensation Board shall not be deemed the employer of a horse racing industry employee for any other purpose.

c. With respect to horse racing industry employees, the requirements of R.S.34:15-1 et seq. regarding the provision of workers' compensation insurance by employers are satisfied in full by compliance with the requirements imposed upon owners by this act and any rules or regulations promulgated hereunder. If the responsible owner fails to comply with the requirements of this act or any rules or regulations promulgated hereunder and if the board is still required to pay the award on behalf of that owner who has been found to have violated this act or any rule or regulation promulgated hereunder, then the board shall be entitled to collect from that owner any assessment which was not paid but which should have been paid by that owner as provided by this act.

d. The provisions of this act shall not apply to employees of an owner who are not horse racing industry employees. To the extent that a horse racing industry employee is also covered by duplicate coverage procured pursuant to another policy of workers' compensation insurance, the coverage procured by the board pursuant to this act shall be considered primary.

C.34:15-136 Computing wages.

8. Notwithstanding the provision of any other law, in determining workers' compensation benefits pursuant to R.S.34:15-1

et seq., the wages of a horse racing industry employee shall be computed in the manner provided under R.S.34:15-37.

C.34:15-137 Act as supplemental to other arrangements.

9. Nothing in this act shall affect any existing contract or policy of employers' liability insurance or the liability of any insurance company or provider, or any arrangement now existing between employers and employees, providing for the payment to such employees, their families, dependents or representatives of sick, accident or death benefits in addition to the workers' compensation coverage provided pursuant to this act; but the liability for such compensation shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any such insurance or other contract, have the right to recover the compensation directly from the employer under an existing contract or policy of employers' liability insurance. The board shall have the same rights provided other employers under R.S.34:15-40.

C.34:15-138 Plan of operation.

10. a. The board shall create a plan of operation to ensure fair, reasonable, and equitable administration. The plan of operation and any amendments thereto shall become effective upon approval in writing by the board.

b. The plan of operation shall constitute the bylaws of the board and shall in addition to the requirements enumerated elsewhere in this act:

(1) establish procedures for handling the assets of the board;

(2) establish regular places and times for meetings of the board;

(3) establish procedures for records to be kept of all financial transactions of the board and its agents;

(4) contain such additional provisions as the board may designate necessary or proper for the execution of the powers and duties of the board.

C.34:15-139 Commission examination, financial report.

11. The board shall be subject to examination by the commission. The board shall submit to the commission no later than March 31 of each year, a financial report for the preceding calendar year in a form approved by the commission, and a report of its activities during the preceding calendar year.

C.34:15-140 Tax exemption.

12. The board shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions.

C.34:15-141 Liability limited.

13. a. The liability of the board and the State with respect to payment of any compensation, benefits, expenses, fees or disbursements properly chargeable against the board shall be limited to the assets held by the board and the board and the State shall not otherwise in any way or manner be liable for the making of any such payment.

b. The liability of the board under this act is limited to the provision of workers' compensation insurance coverage and any sanctions resulting from the failure to so provide. The board may purchase such insurance as necessary to protect any director, officer, agent or other representative from liability.

C.34:15-142 Applicability of R.S.34:15-1 et seq.

14. The provisions of R.S.34:15-1 et seq. shall apply to the provision of workers' compensation insurance under this act in all respects, except as otherwise specifically provided herein.

15. This act shall take effect immediately, except that sections 7 and 8 shall remain inoperative until the January 1st next following enactment.

Approved January 5, 1996.

CHAPTER 330

AN ACT to establish a correctional and rehabilitative program for certain juvenile and youthful offenders, amending P.L.1995, c.164 and supplementing Title 30 of the Revised Statutes.

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

C.52:17B-181 Short title.

1. This act shall be known and may be cited as the "Stabilization and Reintegration Act."

C.52:17B-182 Findings, declarations relative to a correctional, rehabilitative program for juvenile, youthful offenders.

2. The Legislature finds and declares that there is a present need to provide for certain juvenile and young adult offenders a

special program of incarceration stressing a highly structured routine of discipline, regimentation, exercise and work therapy, together with substance abuse and self-improvement counseling, education and an intensive program of aftercare supervision.

The Legislature further finds and declares that such a program would:

a. Develop positive attitude and behavior traits which will foster the work ethic and contribute to the maturity of the participants by utilizing proven techniques of regimentation and structured discipline;

b. Foster self-control, self-respect, teamwork and improved work habits for such offenders so as to enable these offenders to return to society as law-abiding citizens;

c. Provide young adult and juvenile offenders with a rehabilitative experience which will positively influence their behavior and help thwart future criminal activity;

d. Allow for a more creative use of correctional resources than the simple custody of prisoners;

e. Reduce corrections costs by shortening stays of incarceration;

f. Increase an offender's potential for rehabilitation and decrease recidivism by providing a structured, integrated and comprehensive treatment program which includes both an institutional regimen and an intensively supervised aftercare component in the community;

g. Provide meaningful and productive work opportunities and vocational training to enhance and expand offenders' marketable skills; and

h. Help to alleviate overcrowding in prisons and juvenile facilities.

C.52:17B-183 Definitions.

3. As used in this act:

a. "Commission" means the Juvenile Justice Commission in, but not of, the Department of Law and Public Safety established pursuant to P.L.1995, c.284 (C.52:17B-169 et seq.).

b. "Commissioner" means the Commissioner of the Department of Corrections.

c. "Juvenile offender" means a person at least 14 years old at the time of disposition who has been adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, excluding an adjudication for any act which would constitute a crime of the first degree or a crime under chapter 14 of Title 2C of the New Jersey Statutes.

d. "Youthful offender" means a person between 18 and 26 years of age who has been convicted of a crime of the third or fourth degree or convicted of a crime of the second degree but sentenced pursuant to paragraph (2) of subsection f. of

N.J.S.2C:44-1 to a term appropriate to a crime of the third degree, excluding any person convicted of a crime under chapter 14 of Title 2C of the New Jersey Statutes or convicted of any crime which requires the imposition of a mandatory term of imprisonment without eligibility for parole.

C.52:17B-184 "Stabilization and Reintegration Program."

4. a. If funds are expressly appropriated for such purpose, and to the extent of such appropriation, the commissioner shall establish and operate a program, entitled "Stabilization and Reintegration Program" and to be known by the acronym of "SRP," for youthful offenders.

b. The commission shall establish and operate a program, entitled "Stabilization and Reintegration Program" and to be known by the acronym of "SRP," for juvenile offenders.

c. The commissioner and the commission may enter into a contract with a private corporation to establish and operate the programs set forth in this act if the commissioner and the commission determine that this option is in the best interests of the citizens of this State. Notwithstanding any other provision of law to the contrary, the private corporation selected as the contractor for the purpose of implementing this act may be a for-profit corporation.

C.52:17B-185 SRP component.

5. The SRP shall include the following components:

a. Stage I: A comprehensive, residential program consisting of appropriate:

(1) Highly structured routines of discipline;

(2) Physical exercise;

(3) Work;

(4) Substance abuse counseling;

(5) Education and vocational training;

(6) Psychological counseling; and

(7) Self-improvement and personal growth counseling stressing moral values and cognitive reasoning.

b. Stage II: An intensive after-care program which includes work opportunities and vocational training. Offenders shall remain on parole during this period and shall be subject to reincarceration for parole violations.

C.52:17B-186 Offender's admittance into SRP; removal.

6. a. Any juvenile offender or youthful offender who is serving a term of incarceration may be assigned to the program by the

commissioner or commission based upon passing the screening and assessment procedures for admission.

b. If an offender fails to comply with the requirements of the SRP, the offender may be removed from the program to serve the remainder of the sentence originally imposed and shall be eligible for parole pursuant to the provisions of P.L.1979, c.411 (C.30:4-123.51). The offender shall not subsequently be eligible for re-admission to the program.

C.52:17B-187 Reports.

7. No later than 24 months following the implementation of an SRP, the commissioner and the commission shall submit written reports to the Legislature and the Governor describing the implementation and operation of the juvenile and youthful offender SRP and assessing their performance. The reports shall include any recommendations for changes to the SRP deemed necessary for the more effective operation of the programs.

C.52:17B-188 Monitoring procedures.

8. The commissioner and the commission shall establish procedures to monitor the effectiveness of the programs.

C.52:17B-189 County boot camps preserved.

9. Nothing in this act shall be construed to prohibit a county from establishing a boot camp program.

10. The following language provision in section 1 of P.L.1995, c.164, the annual appropriations act for fiscal year 1996, (on page 28), is amended to read as follows:

GENERAL FUND
DIRECT STATE SERVICES
26 DEPARTMENT OF CORRECTIONS
10 Public Safety and Criminal Justice
7025 System-wide Program Support

The amount appropriated hereinabove for the Establishment of "Boot Camp" shall be used by the commission to establish a Stabilization and Reintegration Program for juvenile offenders adjudicated delinquent who are at least 14 years of age.

C.52:17B-190 Other fines, penalties, etc. preserved.

11. Nothing in this act shall be construed to exempt any person who is admitted to the SRP program from the payment of any

fine, penalty, restitution or other financial obligation imposed by law or the court as a result of any adjudication or conviction.

12. This act shall take effect 180 days following enactment except that section 8 shall take effect immediately. However, this act shall remain inoperative until the enactment of P.L.1995, c.284.

Approved January 5, 1996.

CHAPTER 331

AN ACT concerning health insurance coverage for treatment of diabetes and supplementing various parts of the statutory law.

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

C.17:48-6n Coverage for diabetes treatment by individual, group hospital service corporation.

1. a. Every individual or group hospital service corporation contract providing hospital or medical expense benefits that 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 Insurance on or after the effective date of this act shall provide benefits to any subscriber or other person covered thereunder for expenses incurred for the following equipment and supplies for the treatment of diabetes, if recommended or prescribed by a physician or nurse practitioner/clinical nurse specialist: blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar.

b. Each individual or group hospital service corporation contract shall also provide benefits for expenses incurred for diabetes self-management education to ensure that a person with diabetes is educated as to the proper self-management and treatment of their diabetic condition, including information on proper diet.

Benefits provided for self-management education and education relating to diet shall be limited to visits medically necessary upon the diagnosis of diabetes; upon diagnosis by a physician or nurse practitioner/clinical nurse specialist of a significant change in the subscriber's or other covered person's symptoms or conditions which necessitate changes in that person's self-management; and upon determination of a physician or nurse practitioner/clinical nurse specialist that reeducation or refresher education is necessary. Diabetes self-management education shall be provided by a dietitian registered by a nationally recognized professional association of dietitians or a health care professional recognized as a Certified Diabetes Educator by the American Association of Diabetes Educators or a registered pharmacist in the State qualified with regard to management education for diabetes by any institution recognized by the board of pharmacy of the State of New Jersey.

c. The benefits required by this section shall be provided to the same extent as for any other sickness under the contract.

d. This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

e. The provisions of this section shall not apply to a health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

f. The Commissioner of Insurance may, in consultation with the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate and periodically update a list of additional diabetes equipment and related supplies that are medically necessary for the treatment of diabetes and for which benefits shall be provided according to the provisions of this section.

C.17:48A-7l Coverage for diabetes treatment by individual, group medical service corporation.

2. a. Every individual or group medical service corporation contract providing hospital or medical expense benefits that 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 Insurance on or after the effective date of this act shall provide benefits to any subscriber or other person covered thereunder for expenses incurred for the following equipment and supplies for the treatment of diabetes, if recommended or prescribed by a physician or

nurse practitioner/clinical nurse specialist: blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar.

b. Each individual or group medical service corporation contract shall also provide benefits for expenses incurred for diabetes self-management education to ensure that a person with diabetes is educated as to the proper self-management and treatment of their diabetic condition, including information on proper diet. Benefits provided for self-management education and education relating to diet shall be limited to visits medically necessary upon the diagnosis of diabetes; upon diagnosis by a physician or nurse practitioner/clinical nurse specialist of a significant change in the subscriber's or other covered person's symptoms or conditions which necessitate changes in that person's self-management; and upon determination of a physician or nurse practitioner/clinical nurse specialist that reeducation or refresher education is necessary. Diabetes self-management education shall be provided by a dietitian registered by a nationally recognized professional association of dietitians or a health care professional recognized as a Certified Diabetes Educator by the American Association of Diabetes Educators or a registered pharmacist in the State qualified with regard to management education for diabetes by any institution recognized by the board of pharmacy of the State of New Jersey.

c. The benefits required by this section shall be provided to the same extent as for any other sickness under the contract.

d. This section shall apply to all medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

e. The provisions of this section shall not apply to a health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

f. The Commissioner of Insurance may, in consultation with the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate and periodically update a list of additional diabetes equipment and related supplies that are medically necessary for the treatment of diabetes and for which benefits shall be provided according to the provisions of this section.

C.17:48E-35.11 Coverage for diabetes treatment by individual, group health service corporation.

3. a. Every individual or group health service corporation contract providing hospital or medical expense benefits that 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 Insurance on or after the effective date of this act shall provide benefits to any subscriber or other person covered thereunder for expenses incurred for the following equipment and supplies for the treatment of diabetes, if recommended or prescribed by a physician or nurse practitioner/clinical nurse specialist: blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar.

b. Each individual or group health service corporation contract shall also provide benefits for expenses incurred for diabetes self-management education to ensure that a person with diabetes is educated as to the proper self-management and treatment of their diabetic condition, including information on proper diet. Benefits provided for self-management education and education relating to diet shall be limited to visits medically necessary upon the diagnosis of diabetes; upon the diagnosis by a physician or nurse practitioner/clinical nurse specialist of a significant change in the subscriber's or other covered person's symptoms or conditions which necessitate changes in that person's self-management; and upon determination of a physician or nurse practitioner/clinical nurse specialist that reeducation or refresher education is necessary. Diabetes self-management education shall be provided by a dietitian registered by a nationally recognized professional association of dietitians or a health care professional recognized as a Certified Diabetes Educator by the American Association of Diabetes Educators or a registered pharmacist in the State qualified with regard to management education for diabetes by any institution recognized by the board of pharmacy of the State of New Jersey.

c. The benefits required by this section shall be provided to the same extent as for any other sickness under the contract.

d. This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

e. The provisions of this section shall not apply to a health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

f. The Commissioner of Insurance may, in consultation with the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate and periodically update a list of additional diabetes equipment and related supplies that are medically necessary for the treatment of diabetes and for which benefits shall be provided according to the provisions of this section.

C.17B:26-2.1l Coverage for diabetes treatment by individual health insurance policy.

4. a. Every individual health insurance policy providing hospital or medical expense benefits that is delivered, issued, executed or renewed in this State pursuant to Chapter 26 of Title 17B of the New Jersey Statutes or approved for issuance or renewal in this State by the Commissioner of Insurance on or after the effective date of this act shall provide benefits to any person covered thereunder for expenses incurred for the following equipment and supplies for the treatment of diabetes, if recommended or prescribed by a physician or nurse practitioner/clinical nurse specialist: blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar.

b. Each individual health insurance policy shall also provide benefits for expenses incurred for diabetes self-management education to ensure that a person with diabetes is educated as to the proper self-management and treatment of their diabetic condition, including information on proper diet. Benefits provided for self-management education and education relating to diet shall be limited to visits medically necessary upon the diagnosis of diabetes; upon diagnosis by a physician or nurse practitioner/clinical nurse specialist of a significant change in the covered person's symptoms or conditions which necessitate changes in that person's self-management; and upon determination of a physician or nurse practitioner/clinical nurse specialist that reeducation or refresher education is necessary. Diabetes self-management education shall be provided by a dietitian registered by a nationally recognized professional association of dietitians or a health care professional

recognized as a Certified Diabetes Educator by the American Association of Diabetes Educators or a registered pharmacist in the State qualified with regard to management education for diabetes by any institution recognized by the board of pharmacy of the State of New Jersey.

c. The benefits required by this section shall be provided to the same extent as for any other sickness under the policy.

d. This section shall apply to all individual health insurance policies in which the insurer has reserved the right to change the premium.

e. The provisions of this section shall not apply to a health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

f. The Commissioner of Insurance may, in consultation with the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate and periodically update a list of additional diabetes equipment and related supplies that are medically necessary for the treatment of diabetes and for which benefits shall be provided according to the provisions of this section.

C.17B:27-46.1m Coverage for diabetes treatment by group health insurance policy.

5. a. Every group health insurance policy providing hospital or medical expense benefits that is delivered, issued, executed or renewed in this State pursuant to Chapter 27 of Title 17B of the New Jersey Statutes or approved for issuance or renewal in this State by the Commissioner of Insurance on or after the effective date of this act shall provide benefits to any person covered thereunder for expenses incurred for the following equipment and supplies for the treatment of diabetes, if recommended or prescribed by a physician or nurse practitioner/clinical nurse specialist: blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar.

b. Each group health insurance policy shall also provide benefits for expenses incurred for diabetes self-management education to ensure that a person with diabetes is educated as to the proper self-management and treatment of their diabetic condition, including information on proper diet. Benefits provided for self-management education and education relating to diet shall be limited to visits medically necessary upon the diagnosis of diabetes; upon diagnosis by a physician or nurse practitioner/clinical nurse

specialist of a significant change in the covered person's symptoms or conditions which necessitate changes in that person's self-management; and upon determination of a physician or nurse practitioner/clinical nurse specialist that reeducation or refresher education is necessary. Diabetes self-management education shall be provided by a dietitian registered by a nationally recognized professional association of dietitians or a health care professional recognized as a Certified Diabetes Educator by the American Association of Diabetes Educators or a registered pharmacist in the State qualified with regard to management education for diabetes by any institution recognized by the board of pharmacy of the State of New Jersey.

c. The benefits required by this section shall be provided to the same extent as for any other sickness under the policy.

d. This section shall apply to all group health insurance policies in which the insurer has reserved the right to change the premium.

e. The provisions of this section shall not apply to a health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

f. The Commissioner of Insurance may, in consultation with the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate and periodically update a list of additional diabetes equipment and related supplies that are medically necessary for the treatment of diabetes and for which benefits shall be provided according to the provisions of this section.

C.26:2J-4.11 Coverage for diabetes treatment by HMO contracts.

6. a. Every contract for health care services that is delivered, issued, executed or renewed in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) or approved for issuance or renewal in this State on or after the effective date of this act shall provide health care services to any enrollee or other person covered thereunder for the following equipment and supplies for the treatment of diabetes, if recommended or prescribed by a participating physician or participating nurse practitioner/clinical nurse specialist: blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar.

b. Each contract shall also provide health care services for diabetes self-management education to ensure that a person with

diabetes is educated as to the proper self-management and treatment of their diabetic condition, including information on proper diet. Health care services provided for self-management education and education relating to diet shall be limited to visits medically necessary upon the diagnosis of diabetes; upon diagnosis by a participating physician or participating nurse practitioner/clinical nurse specialist of a significant change in the enrollee's or other covered person's symptoms or conditions which necessitate changes in that person's self-management; and upon determination of a participating physician or participating nurse practitioner/clinical nurse specialist that reeducation or refresher education is necessary. Diabetes self-management education shall be provided by a participating dietitian registered by a nationally recognized professional association of dietitians or a health care professional recognized as a Certified Diabetes Educator by the American Association of Diabetes Educators or, pursuant to section 6 of P.L.1993, c.378 (C.26:2J-4.7), a registered pharmacist in the State qualified with regard to management education for diabetes by any institution recognized by the board of pharmacy of the State of New Jersey.

c. The health care services required by this section shall be provided to the same extent as for any other sickness under the contract.

d. This section shall apply to all contracts in which the health maintenance organization has reserved the right to change the schedule of charges.

e. The provisions of this section shall not apply to a health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

f. The Commissioner of Insurance may, in consultation with the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate and periodically update a list of additional diabetes equipment and related supplies that are medically necessary for the treatment of diabetes and for which benefits shall be provided according to the provisions of this section.

7. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 332

AN ACT concerning the retirement benefits of veteran members of the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System of New Jersey and amending N.J.S.18A:66-71 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:66-71 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 one-half 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 60 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 one-sixtieth 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 this act. The death benefit provided in N.J.S.18A:66-41 shall apply in the case of any member retiring 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.

2. 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 shall have attained 62 years of age and who has 20 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 one-half 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 60 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 one-sixtieth 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 retiring under the provisions of subsection c. of this section.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 333

AN ACT concerning lottery prizes and ameding P.L.1991, c.384.

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

1. Section 1 of P.L.1991, c.384 (C.5:9-13.1) is amended to read as follows:

C.5:9-13.1 Initiation of data exchange.

1. The Director of the Division of the State Lottery in the Department of the Treasury and the Director of the Division of Family Development in the Department of Human Services shall initiate an ongoing data exchange in the Office of Telecommunications and Information Systems in the Department of the Treasury before a payment is made of a State lottery prize in excess of $1,000.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 334

AN ACT concerning child support arrearages 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:17-56.37 Court procedures in awarding money in civil action; child support arrearages.

1. a. Upon resolution of any civil action where a party is entitled to receive a monetary award or settlement, the court shall:

(1) Require the submission of a certification which includes the full name, address, Social Security number and date of birth of the party entitled to receive the monetary award or settlement, and

(2) Order that disbursement of any monies due to that person not be made for 30 days after the submission of a certification. As used in this act, "monies due to that person" do not include monies for attorney fees, witness fees, court costs, fees for health care providers, payment of liens which may be subject to the award, including but not limited to, taxes, physician and mechanics' liens and related items, which shall be disbursed immediately.

b. During the 30-day period before monies may be disbursed to the person entitled to receive the monetary award or settlement, the probation department, in cooperation with the Clerk of the Superior Court and the State IV-D agency, shall ascertain whether the person is a child support obligor and, if so, whether any child support amounts are currently in arrears. After calculation of amounts owed for attorney fees, witness fees, fees for health care providers, payment of liens which may be subject to the award, including but not limited to, taxes, physician and mechanics' liens, court costs and related items, any monies remaining out of the award or settlement which represent child support arrearages owed by the person shall be withheld from the award or settlement and forwarded to the probation department for payment to the child support obligee.

c. An attorney may disburse monies due to that person for purposes other than those specified in subsection a. of this section, if notice that the litigant owes any child support arrearages is not received from the probation department and the State IV-D agency within the 30-day period.

d. An attorney who has not received notice from the probation department and the State IV-D agency and disburses monies due to that person after the 30-day period, for purposes other than those specified in subsection a. of this section, shall be immune from civil or criminal liability.

e. An attorney who withholds monies pending a determination by the probation department and the State IV-D agency shall not be liable for payments which otherwise would have been made pursuant to subsection a. of this section which were not so identified to the attorney.

f. An attorney who receives a written determination by the probation department and the State IV-D agency within the 30-day period and as soon as practicable forwards the money to the probation department and the State IV-D agency for payment to the child support obligee, shall not be liable to the litigant or to the litigant's creditors.

g. An attorney shall not be required to challenge a probation department or State IV-D agency determination as to child support arrearages unless retained by the litigant to do so.

C.2A:17-56.38 Rules of court.

2. The Supreme Court may promulgate rules to effectuate the purposes of this act, including, but not limited to, implementing procedures for the exchange of information among the county probation departments and the Clerk of the Superior Court to identify child support obligors from among those parties entitled to receive a monetary award or settlement in a civil action.

C.2A:17-56.39 Rules, directives of department.

3. The Department of Human Services may promulgate rules and directives to effectuate the purposes of this act.

4. This act shall take effect 120 days after enactment and shall apply to all matters pending in the Superior Court on the effective date.

Approved January 5, 1996.

CHAPTER 335

AN ACT establishing a trust fund for certain programs monitoring hard and soft clams and supplementing Title 58 of the Revised Statutes.

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

C.58:24-11 Findings, declarations relative to establishment of "Monmouth County Clam Depuration and Relay Program Fund."

1. The Legislature finds and declares that the ongoing depurated clam and clam relay programs in Monmouth County are the only year-round depurated clam and clam relay programs in the State; that due to the volume and constancy of the depurated and relayed clam industry in Monmouth County, in addition to annual appropriations from the General Fund to the Department of Environmental Protection and the Department of Health, supplemental funding is needed to maintain these programs at the level necessary for the health of the clamming industry and the public consuming the clams; and that companies engaged in clamming in Monmouth County are willing to and interested in making a contribution to this funding if their contribution is dedicated specifically to depurated hard and soft clam and hard clam relay programs in Monmouth County.

The Legislature therefore determines it is in the public interest to establish a fund to be known as the "Monmouth County Clam Depuration and Relay Program Fund," and to provide the supplemental funding required from the fund by the establishment of a per-bushel surcharge by the Department of Environmental Protection.

C.58:24-12 Definitions.

2. For the purposes of this act:

"Approved areas" mean waters meeting the sanitary standards for approved shellfish harvesting as recommended by the Interstate Shellfish Sanitation Conference. Waters not classified as prohibited, special restricted, seasonal special restricted, or seasonal pursuant to rules and regulations adopted by the Department of Environmental Protection shall be considered approved for the harvest of shellfish;

"Bait-harvested clams" mean any hard or soft clams taken from areas other than approved areas for use only as bait and not for human consumption;

"Depurated" means purified by depuration, or a controlled purification or depuration process to the extent necessary to be acceptable for human consumption in accordance with State law and rules and regulations adopted pursuant thereto;

"Hard clam" means any member of the species Mercenaria mercenaria;

"Interstate Shellfish Sanitation Conference" means the formal conference that establishes guidelines and procedures of the National Shellfish Sanitation Program for the sanitary control of the harvesting, processing and distribution of shellfish, and whose membership consists of federal, State and local regulatory agencies responsible for shellfish sanitation, the shellfish industry and the academic community;

"Relayed" means purified by replanting in approved areas after having been taken from areas other than approved areas at market size for the purposes of purification prior to marketing;

"Research" means the taking of shellfish from approved areas or areas other than approved areas, for purposes of scientific investigation requiring naturally contaminated shellfish; and

"Soft clam" means any member of the species Mya arenaria.

C.58:24-13 "Monmouth County Clam Depuration and Relay Program Fund," established.

3. a. There is established in the Department of Environmental Protection a nonlapsing, revolving fund to be known as the "Monmouth County Clam Depuration and Relay Program Fund," hereinafter referred to as "the fund." The fund shall be credited with all surcharges collected pursuant to this section and any interest earned on moneys in the fund shall be credited to the fund. All moneys in the fund shall be appropriated for the purposes specified in this section, and no moneys shall be expended for those purposes without the specific appropriation thereof by the Legislature. The Commissioner of Environmental Protection shall be the administrator of the fund, and all disbursements from the fund shall be made by the commissioner. The fund is established in addition to, and separate from, the "Shellfisheries Law Enforcement Fund" established pursuant to section 3 of P.L.1988, c.35 (C.50:2-3.1), and the moneys disbursed from the fund shall not replace, but shall be provided in addition to, any revenues appropriated from the General Fund and other sources for the purpose of maintaining and implementing depurated hard or soft clam or relayed hard clam programs in Monmouth County, or other shellfish programs of which these programs are a part.

b. There shall be assessed a surcharge of $2.00 on each bushel of depurated or relayed hard clams or depurated soft clams that are harvested as part of the depurated hard or soft clam or hard clam relay programs in Monmouth County. The Department of Environmental Protection shall establish procedures for the manner and method of the assessment and collection of the

surcharges. All surcharges collected by the department pursuant to this section shall be deposited in the fund. Bait-harvested clams and hard or soft clams taken for research purposes shall not be subject to the surcharge established pursuant to this subsection.

c. All moneys in the fund shall be disbursed only for the purpose of funding depurated hard and soft clam or hard clam relay programs in Monmouth County, as provided in subsection d. of this section.

d. The Commissioner of Environmental Protection shall disburse annually the moneys in the fund for expenditures made by the Department of Environmental Protection and the Department of Health in the implementation of depurated hard or soft clam or hard clam relay programs in Monmouth County, but in no case in an amount that is greater than the following percentages of the fund available in any one year: the Department of Environmental Protection, 66.7%, of which amount half shall be used by the Division of Fish, Game and Wildlife exclusively for the purpose of enforcing the laws, rules and regulations that relate to the harvesting, transportation and marketing of clams that are part of the clam depuration or relay programs in Monmouth County, and half shall be used exclusively for water quality monitoring and classification programs in Monmouth County; and the Shellfish Program in the Department of Health, 33.3%.

e. On July 15, 1997, and every other year thereafter, the Commissioner of Environmental Protection shall submit in writing to each person participating in clam depuration and relay programs in Monmouth County and the organizations that represent them, an accounting of the fund, a determination of the adequacy of the moneys on deposit in the fund to support the purposes of this act, and the recommendations of the commissioner as to whether any increase or decrease of the surcharge or the termination or expansion of the programs is warranted. Prior to July 15, 1997, the persons participating in clam depuration and relay programs in Monmouth County and the organizations that represent them shall determine the method by which they shall review the recommendations of the commissioner and submit a response to the commissioner. On August 15th following the receipt of the accounting of the program, and the determination and recommendations from the commissioner, the persons participating in clam depuration and relay programs in Monmouth County and the organizations that represent them, in accordance with the agreed-upon method of review and response, shall submit their recommendations concerning the determination and recommendations of the commissioner in writing to the commissioner. After reviewing the response,

the commissioner shall submit recommendations based on the response to the Governor and the Legislature.

C.58:24-14 Act not to affect other authority.

4. Nothing in this act shall be construed to affect or supersede the authority of the Interstate Shellfish Sanitation Conference to establish the guidelines or procedures of the National Shellfish Sanitation Program, or to affect in any way clamming in any other part of the State, including, but not limited to, seasonal depurated hard or soft clam or hard clam relay programs in any other part of the State.

5. This act shall take effect on the 90th day following the date of enactment.

Approved January 5, 1996.

CHAPTER 336

AN ACT concerning certain residency requirements and amending P.L.1952, c.72.

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

1. Section 5 of P.L.1952, c.72 (C.40:48B-5) is amended to read as follows:

C.40:48B-5 Management committee; membership, appointment; organization, powers, etc.

5. The joint contract shall provide for the constitution and appointment of a management committee to consist of one member to be appointed by the governing body of each of the local units executing same, who shall be a resident of the appointing local unit, except that a member who is the chief financial officer, business administrator, municipal administrator or municipal manager of the local unit making the appointment need not be a resident of the appointing local unit. Such appointee may or may not be a member of the appointing governing body. Each member of the management committee shall hold office for the term of one year and until his successor has been appointed and qualified. In the event that only two local units are parties to the contract, the management committee shall consist of three members, one selected from each by the governing bodies and one member selected by the two other members.

The management committee shall elect annually from among its members a chairman to preside over its meetings. The management committee may appoint such other officers and employees, including counsel, who need not be members of the management committee or members of the governing bodies or employees or residents of the local units, as it may deem necessary. The employees appointed by the management committee shall hold office for such term not exceeding four years as may be provided by the joint contract. The management committee shall adopt rules and regulations to provide for the conduct of its meetings and the duties and powers of the chairman and such other officers and employees as may be appointed. All actions of the management committee shall be by vote of the majority of the entire membership of the committee, except for those matters for which the contract requires a greater number, and shall be binding on all local units who have executed the joint contract. The management committee shall exercise all of the powers of the joint meeting subject to the provisions of the joint contract.

The joint contract may provide for the delegation of the administration of any or all of the services, lands, public improvements, works, facilities or undertakings of the joint meeting to the governing body of any one of the several contracting local units, in which event such governing body shall have and exercise all of the powers and authority of the management committee with respect to such delegated functions.

2. This act shall take effect immediately and shall be applicable to appointments made after the effective date of this act.

Approved January 5, 1996.

CHAPTER 337

AN ACT concerning certain producer-controlled insurers and amending P.L.1993, c.239.

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

1. Section 3 of P.L.1993, c.239 (C.17:22D-3) is amended to read as follows:

C.17:22D-3 Application of provisions of section; controlled business, regulated.

3. a. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

b. Notwithstanding subsection a. of this section to the contrary, the provisions of this section shall not apply if the controlling producer:

(1) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance;

(2) Accepts insurance placements only from non-affiliated subproducers, and not directly from insureds; and

(3) The controlled insurer, except for insurance business written through a residual market plan such as a plan established pursuant to P.L.1970, c.215 (C.17:29D-1) or a plan established pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.), accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

c. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for termination;

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer no less often than monthly. The

due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the laws of this State governing the statutory deposits of insurers doing business in this State. Funds of a controlling producer not required to be licensed in this State shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) The contract shall not be assigned in whole or in part by the controlling producer;

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to these standards, rules, procedures, rates and conditions which shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(8) The rates and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7) of this subsection, comparable business includes, but is not limited to: the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9) If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the controlled insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection e. of this section;

(10) There shall be a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total

writings. The controlled insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it had been notified by the controlled insurer that the limit has been reached; and

(11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

d. Every board of directors of a controlled insurer shall establish an audit committee composed of independent directors. The audit committee shall meet annually with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary who shall be qualified, pursuant to the requirements established by the commissioner for loss reserve opinions required to be submitted by licensed property and casualty insurers in this State, to review the adequacy of the insurer's loss reserves.

e. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, which shall include losses incurred but not yet reported, on business placed by the controlling producer. The loss reserve opinion shall satisfy all requirements established by the commissioner for loss reserve opinions required to be submitted by licensed property and casualty insurers in this State.

f. The controlled insurer shall annually report to the commissioner on April 1 of each year the amount of commissions paid to the controlling producer, the percentage this amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 338

AN ACT concerning insurance holding company systems and amending P.L.1970, c.22.

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

1. Section 3 of P.L.1970, c.22 (C.17:27A-3) is amended to read as follows:

C.17:27A-3 Registration of insurers.

3. Registration of insurers.

a. Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in: this section; paragraph (1) of subsection a. and subsections b. and c. of section 4 of P.L.1970, c.22 (C.17:27A-4); and either paragraph (2) of subsection a. of section 4 of P.L.1970, c.22 (C.17:27A-4) or a substantially similar provision which requires that each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions, including change of or additions to ownership, within 15 days after the end of each month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within 60 days after the effective date of P.L.1993, c.241 or 15 days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

b. Information and form required. Every insurer subject to registration shall file a registration statement and a summary of the registration statement on a form provided by the commissioner, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales, or exchanges of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) All management agreements, service contracts and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders, including the declarations and authorizations thereof; and

(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; or

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

c. Materiality. No information need be disclosed on the registration statement filed pursuant to subsection b. of this section if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees or other contingent obligations involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

d. Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or

additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition.

e. Information of insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if that information is reasonably necessary to enable the insurer to comply with the provisions of P.L.1970, c.22 (C.17:27A-1 et seq.).

f. Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

g. Consolidated filing. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

h. Alternative registration. The commissioner may allow an insurer which is authorized to do business in this State and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection a. and to file all information and material required to be filed under this section.

i. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

j. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

k. Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

2. Section 4 of P.L.1970, c.22 (C.17:27A-4) is amended to read as follows:

C.17:27A-4 Standards.

4. Standards.

a. Transactions with affiliates.

(1) Transactions by registered insurers with their affiliates shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Charges or fees for services performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The insurer's surplus as regards policyholders following any transaction with affiliates or dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into that transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that 30-day period:

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees or other contingent obligations, investments, or loans collateralized by the stock of a subsidiary or affiliate, provided such transactions equal or exceed: (i) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, as of December 31 next preceding; (ii) with respect to life insurers, 3% of the insurer's admitted assets, as of December 31 next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, in which the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making those loans or extensions of credit, provided those transactions are equal to or exceed: (i) with respect to insurers other than life

insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, as of December 31 next preceding; (ii) with respect to life insurers, 3% of the insurer's admitted assets, as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate if an agreement or understanding exists between the insurer and non-affiliate that any portion of those assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts and all cost-sharing arrangements; and

(e) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders. Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer which is not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that such separate transactions were entered into over any 12-month period for that purpose, he may exercise his authority under section 8 of P.L.1993, c.241 (C.17:27A-9.1).

(4) The commissioner, in reviewing transactions pursuant to paragraph (2) of this subsection, shall consider whether the transactions comply with the standards set forth in paragraph (1) of this subsection and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10% of that corporation's voting securities.

(6) The commissioner may by regulation specify certain types of transactions that need not be submitted for review under this subsection if he determines that those transactions would not have a significant impact on the financial condition or methods of operation of the insurer.

b. Adequacy of surplus. For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is

reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors enumerated in this subsection;

(9) The adequacy of the insurer's reserves;

(10) The quality and liquidity of investments in affiliates. The commissioner may discount any such investments or treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants; and

(11) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

c. Dividends and other distributions.

(1) A domestic insurer subject to registration under section 3 of P.L.1970, c.22 (C.17:27A-3) shall report to the commissioner any dividend or distribution to its shareholders within five business days following declaration and at least 30 days, after receipt of that report by the commissioner, prior to payment. For good cause shown, the commissioner may reduce the notification period prior to payment to a period of not less than 10 days. The commissioner shall limit or disallow the payment of any dividend or distribution if he determines that the insurer's surplus as regards policyholders is not reasonable in relation to its outstanding liabilities and adequate to its financial needs pursuant to subsection b. of this section or if the insurer is otherwise found to be in a hazardous financial condition.

(2) (a) No domestic insurer subject to registration under section 3 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the commissioner

has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(b) For purposes of this paragraph, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) 10% of such insurer's surplus as regards policyholders as of December 31 next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(c) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon policyholders until (i) 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(3) Except for extraordinary dividends or distributions paid pursuant to paragraph (2) of this subsection, all dividends or distributions to shareholders shall be declared or paid by insurers subject to registration under section 3 of P.L.1970, c.22 (C.17:27A-3) from only earned surplus. For purposes of this paragraph, "earned surplus" means unassigned funds (surplus), as reported on the insurer's annual statement as of December 31 next preceding, less unrealized capital gains and revaluation of assets.

d. Management of domestic insurers subject to registration.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with P.L.1970, c.22 (C.17:27A-1 et seq.).

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of paragraph (1) of subsection a. of this section.

(3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of that insurer or of any entity controlling, controlled by, or under common control with, that insurer and who are not beneficial owners of a controlling interest in the voting securities of that insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with, the insurer and who are not beneficial owners of a controlling interest in the voting securities of the insurer or any such entity. The committee shall be responsible for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation, including bonuses or other special payments, of the principal officers.

(5) The provisions of paragraphs (3) and (4) of this subsection d. shall not apply to a domestic insurer if the person controlling the insurer is an entity having a board of directors and committees thereof that substantially meet the requirements of those paragraphs.

3. Section 5 of P.L.1970, c.22 (C.17:27A-5) is amended to read as follows:

C.17:27A-5 Examination.

5. Examination.

a. Power of commissioner. In addition to the powers which the commissioner has under other sections of Title 17 of the Revised Statutes and Title 17B of the New Jersey Statutes relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 3 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition of the insurer or to determine compliance with

P.L.1970, c.22 (C.17:27A-1 et seq.). In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

b. (Deleted by amendment, P.L.1993, c.241.)

c. Use of consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other persons as shall be necessary to assist in the conduct of the examination under subsection a. above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

d. Expenses. The reasonable expenses of the examination pursuant to subsection a. above shall be fixed and determined by the commissioner, and he shall collect them from the insurer examined, which shall pay them on presentation of an accounting of the expenses.

4. Section 8 of P.L.1970, c.22 (C.17:27A-8) is amended to read as follows:

C.17:27A-8 Injunctions; prohibitions against voting securities, sequestration of voting securities.

8. Injunctions; prohibitions against voting securities, sequestration of voting securities.

a. Injunctions. Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the Superior Court for an order enjoining such person or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

b. Voting of securities; when prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the

action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the Superior Court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 2 of P.L.1970, c.22 (C.17:27A-2) or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

c. Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the commissioner hereunder, the Superior Court may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this State.

5. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 339

AN ACT concerning the valuation of the reserve liabilities for life and health insurance policies, amending and supplementing Title 17B of the New Jersey Statutes and repealing N.J.S.17B:19-6 and N.J.S.17B:19-9.

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

1. N.J.S.17B:19-8 is amended to read as follows:

Standard valuation law.

17B:19-8. This section shall be known as the standard valuation law and shall apply to all the life insurance policies, pure endowment contracts and annuity contracts issued by every life insurer on or after January 1, 1948 or such earlier date as shall have been elected by the insurer as the operative date for such insurer of the standard nonforfeiture law.

a. Except as otherwise provided in paragraph (ix) and paragraph (x) of this subsection, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in subsections b., e. and f. of this section, 3 1/2% interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after January 1, 1973, 4% interest for such policies issued prior to January 1, 1977 and 4 1/2% interest for such policies issued on or after January 1, 1977, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table; provided, however, that the Commissioners 1958 Standard Ordinary Mortality Table shall be the table for the minimum standard for such policies issued on or after January 1, 1966 or, for policies in any category of ordinary insurance, such earlier date as shall have been elected by the insurer for the purpose and prior to the operative date, for such category, provided for in paragraph (xi) of subsection h. of the standard nonforfeiture law for life insurance (N.J.S.17B:25-19); provided that for any category of such policies issued on female risks on or after July 1, 1957 and prior to the operative date provided for in paragraph (xi) of subsection h. of the standard nonforfeiture law for life insurance, all modified net premiums and present values, referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date provided for in paragraph (xi) of subsection h. of N.J.S.17B:25-19, the Commissioners 1980 Standard Ordinary Mortality Table, or at the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or any ordinary mortality table, adopted after 1980 by the National Association of

Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation of those policies.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table; provided, however, that the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies shall be the table for the minimum standard for such policies issued on or after January 1, 1968 or such earlier date as shall have been elected by the insurer as the date on which the calculation of the adjusted premiums referred to in the standard nonforfeiture law for life insurance (N.J.S.17B:25-19) for such insurer's industrial life insurance policies became based upon said table.

(iii) For individual annuity and pure endowment contracts issued prior to the operative date of paragraph (ix) of this subsection, excluding any disability and accidental death benefits in such contracts, the 1937 Standard Annuity Mortality Table, or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, except annuities and pure endowments purchased thereunder on or after the operative date of paragraph (ix) of this subsection, excluding any disability and accidental death benefits in such contracts, the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefits or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961 and prior to January 1,

1966, either such tables, or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Either table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the commissioner.

(viii) For ordinary and industrial paid-up nonforfeiture term insurance, and accompanying pure endowment, the table of mortality based on the rates of mortality assumed in calculating the paid-up nonforfeiture benefits.

(ix)Except as provided in paragraph (x) of this subsection, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph (ix), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, the commissioner's reserve valuation methods defined in subsections b. and f. and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of any such table approved by the commissioner, and, for such contracts issued prior to January 1, 1977, 6% interest for single premium immediate annuity con-

tracts, and 4% interest for all other individual annuity and pure endowment contracts, and such contracts issued on or after January 1, 1977, 7 1/2% interest for single premium immediate annuity contracts and 4 1/2% interest for other individual annuity and pure endowment contracts.

(2) For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of any such table approved by the commissioner, and 6% interest; except 7 1/2% interest for purchases on or after January 1, 1977.

After January 1, 1973, an insurer may file with the commissioner a written notice of its election to comply with the provisions of this paragraph (ix) beginning on a specific date that is on or after January 1, 1973 but prior to January 1, 1979. Such specific date shall be the operative date of this paragraph for such insurer, provided that if an insurer makes no such election, the operative date of this paragraph for such insurer shall be January 1, 1979.

(x) The interest rates used in determining the minimum standard for the valuation of: all life insurance policies issued in a particular calendar year on or after the operative date provided for in subsection h. (xi) of N.J.S.17B:25-19; all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1981; all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1981 under group annuity and pure endowment contracts; and the net increase, if any, in a particular calendar year after January 1, 1981, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates established below.

The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer 1/4 of 1%:

(1) For life insurance,

$$I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities

with cash settlement options and from guaranteed interest contracts with cash settlement options,

$I = .03 + W (R - .03)$

where R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in subparagraph (7) of this paragraph, and W is the weighting factor defined in subparagraph (6) of this paragraph;

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (2) of this paragraph, the formula for life insurance stated in subparagraph (1) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in subparagraph (2) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations of 10 years or less;

(4) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (2) of this paragraph shall apply; and

(5) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (2) of this paragraph shall apply.

However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2 of 1%, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year, notwithstanding when the provisions of subsection h. of N.J.S.17B:25-19, the standard nonforfeiture law for life insurance become operative;

(6) The weighting factors, W, referred to in the formulas stated above are given in the following schedules:

SCHEDULE A

Weighting Factors for Life Insurance:

Guarantee Duration Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

SCHEDULE B

Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

SCHEDULE C

Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Schedule B above, shall be as specified in Tables A, B and C below, according to the rules and definitions in D, E and F below:

TABLE A

For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

TABLE B

	Plan Type A	Plan Type B	Plan Type C
For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in Table A above increased by:	.15	.25	.05

TABLE C

	Plan Type A	Plan Type B	Plan Type C
For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in Table A or derived in Table B increased by:	.05	.05	.05

Rule D. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee durations in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

Rule E. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or (2) without such adjustment but in installments over five years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or (2) without such adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

Rule F. An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this paragraph (x) of subsection a., an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund;

(7) The reference interest rate, R, referred to in this paragraph (x) is defined as follows:

For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the

Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated above, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated above, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated above, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

In the event that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the commissioner, may be substituted.

b. Except as otherwise provided in subsections e. and f. of this section, reserves according to the commissioner's reserve valua-

tion method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985 for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection e., be the greater of the reserve as of such policy anniversary calculated as described in the first paragraph of this subsection and the reserve as of such policy anniversary calculated as described in that paragraph, but with (i) the value defined in subparagraph (A) of that paragraph being reduced by 15% of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date,

(iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsection a. of this section shall be used.

Reserves according to the commissioner's reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1986, as now or hereafter amended, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection b.

c. In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections b., e., f. and g. and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies. Reserves for any category of policies, contracts or benefits as established by the commissioner shall not be calculated according to any standards which produce smaller aggregate reserves for such category than the corresponding aggregate values of nonforfeiture benefits available as of the valuation date. In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by a qualified actuary to be necessary to render the opinion required pursuant to section 2 of P.L.1995, c.339 (C.17B:19-10).

d. Reserves for any category of policies, contracts or benefits as established by the commissioner may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided. An insurer which adopts any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard pursuant to this section may, with the approval of the

commissioner, adopt any lower standard of valuation, but not lower than the minimum standard pursuant to this section herein provided; provided, however, that, for purposes of this subsection, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required pursuant to section 2 of P.L.1995, c.339 (C.17B:19-10) shall not be deemed to be the adoption of a higher standard of valuation.

e. If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsection a. of this section.

Provided that for any life insurance policy issued on or after January 1, 1985 for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection e. shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection b., notwithstanding the provisions of the second paragraph of such subsection b. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection b., including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection e.

f. This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement

accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1986, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

g. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections b., e., and f. of this section, the reserves which are held under any such plan shall:

(i) be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(ii) be computed by a method which is consistent with the principles of this standard valuation law, as determined by regulations promulgated by the commissioner.

C.17B:19-10 Reserves, related actuarial items; annual opinion of qualified actuary.

2. a. Every insurer authorized to transact life, health or annuity business and every fraternal benefit society doing business in this State shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are: computed appropriately; based on assumptions which satisfy contractual provisions; and consistent with prior reported amounts and comply with applicable laws of this State. The commissioner shall define by regulation the specifics of this opinion and add such other items deemed to be necessary to its scope.

b. (1) Every insurer authorized to transact life, health or annuity business and every fraternal benefit society, except as exempted by the commissioner by regulation, shall also annually include in the opinion required pursuant to subsection a. of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the insurer or society with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's or society's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(2) The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

c. Each opinion required pursuant to subsection b. of this section shall be governed by the following provisions:

(1) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(2) If the insurer or society fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation, or the commissioner determines that the supporting memorandum provided by the insurer or society fails to meet the standards prescribed by regulation or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer or society to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

d. Every opinion shall be governed by the following provisions:

(1) The opinion shall be submitted with the annual statement reflecting the valuation of reserves for each year ending on or after December 31, 1995.

(2) The opinion shall apply to all policies or contracts in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(3) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by regulation prescribe.

(4) In the case of an opinion required to be submitted by a foreign or alien insurer or fraternal benefit society, the commissioner may accept the opinion filed by that insurer or society with the insurance supervisory official of another state or jurisdiction if the commissioner determines that the opinion reasonably meets the requirements applicable to an insurer or society domiciled in this State.

(5) For the purpose of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in those regulations.

(6) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurer, the fraternal benefit society and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(7) Disciplinary action by the commissioner against the insurer, fraternal benefit society or the qualified actuary shall be defined in regulation by the commissioner.

(8) Any memorandum in support of the opinion, and any other material provided by the insurer or fraternal benefit society to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder; provided, however, that the memorandum or other material may otherwise be released by the commissioner (a) with the written consent of the insurer or fraternal benefit society or (b) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer or fraternal benefit society in its marketing or is cited before any governmental agency other than a state insurance department or is released by the insurer or fraternal benefit society to the news media, all portions of the confidential memorandum shall no longer be confidential.

Repealer.

3. N.J.S.17B:19-6 and 17B:19-9 are repealed.

4. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 340

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

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

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

C.17B:27A-17 Definitions relative to small employer health benefits plans.

1. As used in this act:

"Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 9 of P.L.1992, c.162 (C.17B:27A-25), based upon examination, including a review of the appropriate records and actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefits plans.

"Anticipated loss ratio" means the ratio of the present value of the expected benefits, not including dividends, to the present value of the expected premiums, not reduced by dividends, over the entire period for which rates are computed to provide coverage. For purposes of this ratio, the present values must incorporate realistic rates of interest which are determined before federal taxes but after investment expenses.

"Board" means the board of directors of the program.

"Carrier" means any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in New Jersey or any health maintenance organization located in New Jersey that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.

"Commissioner" means the Commissioner of Insurance.

"Community rating" means a rating methodology in which the premium for all persons covered by a policy or contract form is the same based upon the experience of the entire pool of risks covered by that policy or contract form without regard to age, gender, health status, residence or occupation.

"Department" means the Department of Insurance.

"Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefits plan covering the employee.

"Eligible employee" means a full-time employee who works a normal work week of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefits plan of a small employer, but does not include employees who work less than 25 hours a week, work on a temporary or substitute basis or are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement.

"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.

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19). For purposes of this act, "health benefits plan" excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, prescription only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other supplemental limited benefit insurance coverage, automobile medical payment insurance, personal injury protection coverage issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) and stop loss or excess risk insurance.

"Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefits plan of a small employer

following the initial minimum 30-day enrollment period provided under the terms of the health benefits plan. An eligible employee or dependent shall not be considered a late enrollee if the individual: a. was covered under another employer's health benefits plan at the time he was eligible to enroll and stated at the time of the initial enrollment that coverage under that other employer's health benefits plan was the reason for declining enrollment; b. has lost coverage under that other employer's health benefits plan as a result of termination of employment, the termination of the other plan's coverage, death of a spouse, or divorce; and c. requests enrollment within 90 days after termination of coverage provided under another employer's health benefits plan. An eligible employee or dependent also shall not be considered a late enrollee if the individual is employed by an employer which offers multiple health benefits plans and the individual elects a different plan during an open enrollment period; or if a court of competent jurisdiction has ordered coverage to be provided for a spouse or minor child under a covered employee's health benefits plan and request for enrollment is made within 30 days after issuance of that court order.

"Member" means all carriers issuing health benefits plans in this State on or after the effective date of this act.

"Multiple employer arrangement" means an arrangement established or maintained to provide health benefits to employees and their dependents of two or more employers, under an insured plan purchased from a carrier in which the carrier assumes all or a substantial portion of the risk, as determined by the commissioner, and shall include, but is not limited to, a multiple employer welfare arrangement, or MEWA, multiple employer trust or other form of benefit trust.

"Plan of operation" means the plan of operation of the program including articles, bylaws and operating rules approved pursuant to section 14 of P.L.1992, c.162 (C.17B:27A-30).

"Preexisting condition provision" means a policy or contract provision that excludes coverage under that policy or contract for charges or expenses incurred during a specified period following the insured's effective date of coverage, for a condition that, during a specified period 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 pregnancy existing on the effective date of coverage.

"Program" means the New Jersey Small Employer Health Benefits Program established pursuant to section 12 of P.L.1992, c.162 (C.17B:27A-28).

"Qualifying previous coverage" means benefits or coverage provided under:

a. Medicare or Medicaid or any other federally funded health benefits program;

b. a group health insurance policy or contract, including coverage by an insurance company, a health, hospital or medical service corporation, or a health maintenance organization, or an employer-based, self-funded or other health benefit arrangement; or

c. an individual health insurance policy or contract, including coverage by an insurance company, a health, hospital or medical service corporation, or a health maintenance organization.

Qualifying previous coverage shall not include the following policies, contracts or arrangements, whether issued on an individual or group basis: specified disease only, accident only, credit, disability, long-term care, Medicare supplement, dental only, prescription only or vision only, insurance issued as a supplement to liability insurance, stop loss or excess risk insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other supplemental limited benefit coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.).

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed at least two but no more than 49 eligible employees, the majority of whom are employed within the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer. Subsequent to the issuance of a health benefits plan to a small employer pursuant to the provisions of this act, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this act which apply to a small employer shall continue to apply until the anniversary date of the health benefits plan next following the date the employer no longer meets the definition of a small employer. For the purposes of P.L.1992, c.162 (C.17B:27A-17 et seq.), a State, county or municipal body, agency, board or department shall not be considered a small employer.

"Small employer carrier" means any carrier that offers health benefits plans covering eligible employees of one or more small employers.

"Small employer health benefits plan" means a health benefits plan for small employers approved by the commissioner pursuant to section 17 of P.L.1992, c.162 (C.17B:27A-33).

"Stop loss" or "excess risk insurance" means an insurance policy designed to reimburse a self-funded arrangement of one or more small employers for catastrophic, excess or unexpected expenses, wherein neither the employees nor other individuals are third party beneficiaries under the insurance policy. In order to be considered stop loss or excess risk insurance for the purposes of P.L.1992, c.162 (C.17B:27A-17 et seq.), the policy shall establish a per person attachment point or retention or aggregate attachment point or retention, or both, which meet the following requirements:

a. If the policy establishes a per person attachment point or retention, that specific attachment point or retention shall not be less than $25,000 per covered person per plan year; and

b. If the policy establishes an aggregate attachment point or retention, that aggregate attachment point or retention shall not be less than 125% of expected claims per plan year.

"Supplemental limited benefit insurance" means insurance that is provided in addition to a health benefits plan on an indemnity non-expense incurred basis.

2. 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.§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.§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-19b., 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-19b., 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 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 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 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 section. This section shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

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

C.17B:27A-25 Community rating required; other plan requirements.

9. a. (1) Beginning on the fourth 12-month anniversary date of any policy or contract issued in 1994, no small employer health benefits plan shall be issued in this State unless the plan is community rated.

(2) Beginning January 1, 1994 and upon the first 12-month anniversary date thereafter of the policy or contract, the premium rate charged by a carrier to the highest rated small group purchasing a small employer health benefits plan issued pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) shall not be greater than 300% of the premium rate charged to 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.

(3) Beginning on the second 12-month anniversary after the date established in paragraph (2) of this subsection of the policy or contract, the premium rate charged by a carrier to the highest rated small group purchasing a small employer health benefits plan issued pursuant to subsection a. of 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 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 a policy form shall not be less than 75% of the premium therefor. 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 each 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 the policy form 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 each such policy form for the previous calendar year. In each case where the loss ratio for a policy 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 that policy form 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 policy form 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, 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.

(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).

4. The board shall, in combination with its carrier members, conduct a study to determine the effect of the transition to community rating on a representative number of the existing small employer groups to whom policies are issued in the State. The study shall include, but not be limited to, an assessment of the estimated percentage increase or decrease in premiums which is attributable to community rating on groups of varying demographic characteristics. The study shall be submitted to the Governor and the Legislature no later than June 30, 1997, at which time the Legislature shall determine whether community rating shall go into effect on January 1, 1998, or whether the impact of community rating on small employer health benefits plans is sufficiently adverse to warrant the elimination of that provision as enacted in paragraph (1) of subsection a. of section 9 of P.L.1992, c.162 (C.17B:27A-25).

5. The board shall, in conjunction with the Individual Health Insurance Program Board and the department, conduct a study to determine the impact on the individual and small employer insurance markets of permitting individuals to purchase a small employer health benefits plan. The study shall include, but not be limited to, a consideration of the benefit structure of the standard plans in the individual insurance market, the effect of the rating differentials between the individual and small employer markets on purchasers of health benefits plans and the impact on rates of the assessments on carriers for losses in the individual market. The study shall include such other issues as the Legislature and Governor may determine after the effective date of this act. The board shall report its findings to the Governor and the Legislature six months from the effective date of this act.

C.17B:27A-23.1 Notification of termination of policy.

6. If a small employer is no longer eligible for coverage under a health benefits plan pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.), the carrier shall so notify the small employer at least 60 days prior to the termination of the policy or contract. This 60-day notification requirement shall not apply in cases of nonpayment of required premiums by the policy or contract holder or employer, or fraud or misrepresentation of the policy or contract holder or employer or, with respect to coverage of eligible employees or dependents, fraud or misrepresentation of the enrollees or their representatives.

C.17B:27A-19.3 Regulations governing rating methodology, calculation of loss ratios.

7. The commissioner, in consultation with the board, shall establish regulations governing the applicable rating methodology and manner in which loss ratios shall be calculated for health benefits plans permitted to be renewed or continued pursuant to the provisions of subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19). In establishing these regulations, the commissioner may consider, but shall not be limited to, the impact of allowing these health benefits plans to continue to be rated separately from the standard health benefits plans established pursuant to subsection a. of section 3 of P.L.1992, c.162 (C.17B:27A-19) and on their own claims experience. If the commissioner determines that the continuation of separate rating pools adversely affects the small employer insurance market and serves to counter the public policy goals which led to the enactment of P.L.1992, c.162 (C.17B:27A-17 et seq.), the commissioner shall develop a

methodology which creates a linkage between the standard health benefits plans established pursuant to subsection a. of section 3 of P.L.1992, c.162 (C.17B:27A-19) and the plans permitted to be continued or renewed pursuant to the provisions of subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19) for the purpose of rating and loss ratio calculation.

Regulations established under the provisions of this section shall detail all additional obligations of carriers continuing or renewing health benefits plans pursuant to the provisions of subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19) which are necessary to meet the general requirements of P.L.1992, c.162 (C.17B:27A-17 et seq.).

The regulations shall be adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) no later than 180 days following the effective date of this act. Until such time as the regulations are adopted, the health benefits plans shall continue to be rated and subject to the loss ratio calculations in accordance with applicable law in effect on the effective date of P.L.1995, c.340.

8. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 341

AN ACT concerning the extension of State and local permits, and amending P.L.1992, c.82.

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

1. Section 4 of P.L. 1992, c.82 (C.40:55D-133) is amended to read as follows:

C.40:55D-133 Extension of approval; exceptions.

4. a. For any government approval which expired or is scheduled to expire during the economic emergency, that approval is automatically extended until December 31, 1996, except as otherwise provided hereunder. Nothing in this act shall prohibit the granting of such additional extensions as are provided by law when the extensions granted by this act shall expire.

b. Nothing in this act shall be deemed to extend or purport to extend any permit issued by the government of the United States or any agency or instrumentality thereof, or to any permit by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities.

c. Nothing in this act shall be deemed to extend any permit or approval issued pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) if the extension would result in a violation of federal law, or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to Pub.L.95-625 (16 U.S.C.§ 471 (i)).

d. This act shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the period of the economic emergency, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

e. In the event that any permit extended pursuant to the "Permit Extension Act," P.L.1992, c.82 (C.40:55D-130 et seq.) was based upon the connection to a sanitary sewer system, the permit's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose permits have been extended shall have priority with regard to the further allocation of gallonage over those permit holders who have not received approval of a hookup prior to the enactment of the "Permit Extension Act." Priority regarding the distribution of further gallonage to any permit holder who has received the extension of a permit pursuant to the "Permit Extension Act" shall be allocated in order of the granting of the original approval of the connection.

f. This act shall not extend any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to January 1, 1992, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.

g. In the case of any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) which is extended pursuant to P.L.1992, c.82 (C.40:55D-130 et seq.), a

municipality may disapprove such an extension of approval for the period beyond January 1, 1996, if, subsequent to January 1, 1992, but prior to July 1, 1994, an amendment has been adopted to the master plan and the zoning ordinance to change the use of the property for which the approval was issued to a use different from the use for which the approval was issued. A municipal disapproval pursuant to this subsection shall be made prior to June 30, 1995.

h. Nothing in this act shall be deemed to extend any permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.) that expires after December 31, 1994 but prior to January 1, 1997, if the permit was issued for a development located in the coastal area, as defined pursuant to section 4 of P.L.1973, c.185 (C.13:19-4), between the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward.

i. This act shall not affect the terms or expiration date of any stipulation of settlement that was made or entered into during the economic emergency, provided that the stipulation of settlement involves a development which received preliminary major subdivision approval prior to January 1, 1979 in a municipality that has adopted a zoning change affecting the lot size and density of the development which is the subject of the stipulation of settlement after the date of the preliminary or final subdivision approval of that development, and provided further that the stipulation of settlement does not affect any housing constructed or rehabilitated in fulfillment of a fair share housing plan adopted pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 342

A SUPPLEMENT to "An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1995 and regulating the disbursement thereof," approved June 30, 1994 (P.L.1994, c.67).

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

1. In addition to the amounts appropriated in P.L.1994, c.67, there is appropriated from the General Fund the following sum for the purpose specified:

DIRECT STATE SERVICES
42 DEPARTMENT OF ENVIRONMENTAL PROTECTION
40 Community Development and Environmental Management
42 Natural Resource Management

12-4875 Parks Management..... $60,000
Special Purpose:
Proprietary House Maintenance
and Repairs ..... ($60,000)

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 343

AN ACT establishing a program to assist low and moderate income families to attain home ownership, and supplementing P.L.1966, c.293 (C.52:27D-1 et seq.).

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

C.55:14K-54 Short title.

1. This act shall be known and may be cited as the "Affordable Home Ownership Opportunities Act of 1995."

C.55:14K-55 Findings, etc. relative to housing for low and moderate income families.

2. The Legislature finds, determines and declares:

a. Housing problems in this State have been, and continue to be, acute, especially in that adequate accommodations, at affordable cost, are increasingly unavailable to lower-income families,

and prospective home buyers in all but the higher income categories are thwarted by the formidable costs of home acquisition.

b. Accordingly, it is the purpose of this act to establish a program to aid nonprofit organizations in endeavors to develop home-ownership opportunities for lower-income purchasers who are prepared to invest their personal efforts in the construction or rehabilitation of their own housing units.

C.55:14K-56 Definitions.

3. As used in this act:

"Affordable Home Ownership Opportunities Bonds" means any bonds of the New Jersey Housing and Mortgage Finance Agency that provide funds to facilitate the provisions of this act.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project for the creation of low or moderate income housing which meets the standards of eligibility for loans under the program created by this act.

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project to whom a loan may be made under the program pursuant to section 5 of this act.

"Fund" means the Affordable Home Ownership Opportunities Fund established by section 5 of this act.

"Housing region" means a housing region as defined in subsection b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-304) and determined by the Council on Affordable Housing pursuant to section 7 of that act, P.L.1985, c.222 (C.52:27D-307).

"Local enforcement authority" means any officer or agency of local government responsible for the implementation or enforcement of land-use and building regulations established by or pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Program" means the Affordable Home Ownership Opportunities Program created by this act.

"Qualified nonprofit organization" means any corporation or association of persons organized under Title 15A of the New Jersey Statutes, having for its principal purpose, or as a purpose ancillary to its principal purpose, the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), being within the description of section 501(c)(3) of the United States Internal Revenue Code (26 U.S.C. §501(c)(3)), having been determined by the agency to be a bona fide organization not under the effective control of any for-profit organization or governmental entity, and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of this act.

"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes, or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

C.55:14K-57 Amount set aside to provide mortgage loans.

4. a. In furtherance of the public policy of this act, the agency shall set aside, from the bonds of the agency, an amount to be determined by the agency of the total aggregate original principal amount of such bonds to provide mortgage loans to purchasers under the Affordable Home Ownership Opportunities Program created pursuant to this act.

b. The purpose of these bonds shall be to assist qualified nonprofit organizations in the creation of eligible low and moderate income housing projects in the manner and to the extent provided in the program established by this act.

c. The bonds shall bear the rate or rates of interest as may be determined by the agency, which interest shall be payable as may be determined by the agency.

C.55:14K-58 Affordable Home Ownership Opportunities Fund established.

5. a. There is hereby established in the agency the Affordable Home Ownership Opportunities Program and the Affordable

Home Ownership Opportunities Fund, which fund shall be continuing and nonlapsing, for the purpose of assisting the financing of eligible projects pursuant to this act. Moneys in the fund not immediately required for payment or liquid reserves may be invested and reinvested by the agency in the same manner in which other agency funds may be invested.

b. There shall be paid into the fund: (1) otherwise uncommitted reserves of the agency and available for this purpose, in amounts to be determined by the agency to be prudent and appropriate; (2) any income earned upon investment of moneys in the fund by the agency pursuant to subsection a. of this section; and (3) any other funds that may be available to the fund through appropriation by the Legislature or otherwise.

c. Moneys in the fund shall be used exclusively for (1) funding loans pursuant to section 6 of this act and (2) defraying the administrative costs of the agency in carrying out the purposes and provisions of this act, but not more than two per cent of the proceeds of the bonds authorized and actually expended pursuant to section 4 of this act shall be used for such administrative costs.

d. Interest upon loans to eligible purchasers shall be established by the agency at the lowest rate compatible with the integrity of the fund and its proper administration, maintenance of adequate reserves and the ability of the agency to pay the interest upon and repay the principal of bonds under the program.

C.55:14K-59 Loans by agency authorized.

6. a. The agency is hereby authorized to make loans under the program to qualified purchasers of dwelling units from nonprofit organizations undertaking eligible projects that meet the requirements of section 7 of this act.

b. Loans made pursuant to this act shall be to low and moderate income purchasers of dwelling units within the project for which the loan is made, who intend making such dwelling units their principal place of residence, and who have entered into agreements with a qualified nonprofit organization to participate to the extent of their abilities in the actual work of construction or substantial rehabilitation. The terms of any such agreement shall provide that, if the prospective purchaser fails or refuses to carry out his obligations thereunder, or withdraws from participation in the project before completion of the project or any portion thereof to which his obligation extends, the nonprofit organization shall provide for substitution of another prospective purchaser who

shall succeed to all the rights and obligations of the previous participant subsisting at the time of substitution.

(1) Loans made pursuant to this subsection shall be made only to pre-qualified home purchasers whose eligibility for such loans under the terms of this act has been determined by the agency.

(2) A loan made to an eligible purchaser out of funds granted pursuant to this act shall be secured by a mortgage held by the agency. The mortgage shall be secured by the property purchased by the eligible purchaser and shall be amortized monthly, with interest not to exceed a rate consistent with the provisions of subsection d. of section 5 of this act. The loan shall be repayable in full upon sale, lease or other transfer of the property resulting in that property's ceasing to be the principal residence of that purchaser; except that such eligible purchaser shall be entitled at any prior time, and without ceasing to maintain the property as his principal residence, to make repayment in whole or part. The agency may forebear the payment of interest to the extent it deems prudent and as may be permitted by the conditions of the bonds in any case in which it finds good cause and that the exaction of such payment would work an exceptional hardship upon the borrower.

C.55:14K-60 Eligibility for loans.

7. A project of new construction or substantial rehabilitation by a nonprofit organization shall be eligible for a loan under this act if (1) the homes to be constructed or substantially rehabilitated under the project are located within an identifiable neighborhood in which median family income does not exceed the current standard of "moderate income" pursuant to the contemporaneous standards of the Council on Affordable Housing; (2) the homes to be constructed or substantially rehabilitated under the project are sufficient in number and located on the same or contiguous parcels of land or within such proximity to each other as to render the cost per unit of housing practicable for acquisition by lower-income purchasers; and (3) each home constructed or substantially rehabilitated within the project will conform to all requirements of the State Uniform Construction Code, except as to the waiver of any fee or other requirement pursuant to subsection b. of section 9 of this act.

C.55:14K-61 Selection of eligible projects.

8. In selecting eligible projects to receive loans from the fund, the agency shall accord priority to programs in which:

a. Private donors or local units of government contribute land or money to make the program feasible.

b. Financial or other contributions from public or private sources, including tax abatements, waivers of fees relating to development, waivers of construction, development or zoning requirements, will reduce the cost of homes to be constructed or substantially rehabilitated.

c. Use of the loans will be efficient, as measured by the number of dwelling units produced in proportion to the amount of all loans, having due regard to the difference of construction costs in different housing regions and to the relative costs of different family-size units.

d. Construction costs per square foot compare favorably with average costs in the same housing region.

e. The project will contribute significantly to the rehabilitation of or removal or prevention of blight in the area in which it is located, in the judgment of the agency, regardless of whether the area has been formally designated, in accordance with statutory procedures, as blighted or in need of rehabilitation.

f. The design of the project provides for the involvement of local residents in its planning and execution.

g. The design of the project encourages the development of housing units suitable for and attractive to households consisting of extended families, comprising persons related by birth, marriage or descent, being of different generations or adult siblings of the same generation, or both, living together as a single household and sharing accommodations, facilities and functions within the family unit appropriate to their respective ages, abilities and resources.

C.55:14K-62 Eligible project declared public work.

9. Any eligible project that conforms to the standards and requirements of this act and the regulations promulgated pursuant thereto is hereby declared to be a public work in furtherance of the housing policy of this State, and any contribution of property, money or services in furtherance of such a program by a unit of local government shall be deemed an expense or cost incurred in furtherance of a public purpose.

C.55:14K-63 Rules, regulations.

10. The agency is authorized to promulgate the rules and regulations necessary to effectuate the provisions and purposes of this act in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). In developing these regulations the agency shall examine and analyze any existing programs of similar type that have been successfully effectuated in other jurisdictions, and shall endeavor to formulate criteria and procedures, both for the design and operation of viable projects and for

the selection of and obligations assigned to individual participants who shall be assisted by the program.

11. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 344

AN ACT concerning the provision of affordable housing, amending the "Fair Housing Act," 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. 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 six 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 six-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 six-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 six 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 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; and

(8) Utilization of municipally generated funds toward the construction of low and moderate income housing.

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing which is not inconsistent with section 23 of this act.

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 this act 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.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 345

AN ACT permitting municipality to require county tax board to strike its general tax rate rounded up to the nearest one-half penny and amending R.S.54:4-52.

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

1. R.S.54:4-52 is amended to read as follows:

Table of aggregates for county; prepared by county board.

54:4-52. The county board of taxation shall, on or before May 20, fill out a table of aggregates copied from the duplicates of the several assessors and the certifications of the Director of the Division of Taxation relating to second-class railroad property, and enumerating the following items:

(1) The total number of acres and lots assessed;

(2) The value of the land assessed;

(3) The value of the improvements thereon assessed;

(4) The total value of the land and improvements assessed, including:

a. Second-class railroad property;

b. All other real property.

(5) The value of the personal property assessed, stating in separate columns:

a. Value of household goods and chattels assessed;

b. Value of farm stock and machinery assessed;

c. Value of stocks in trade, materials used in manufacture and other personal property assessed under section 54:4-11;

d. Value of all other tangible personal property used in business assessed.

(6) Deductions allowed, stated in separate columns:

a. Household goods and other exemptions under the provisions of section 54:4-3.16 of this Title;

b. Property exempted under section 54:4-3.12 of this Title.

(7) The net valuation taxable;

(8) Amounts deducted under the provisions of sections 54:4-49 and 54:4-53 of this Title or any other similar law (adjustments resulting from prior appeals);

(9) Amounts added under any of the laws mentioned in subdivision 8 of this section (like adjustments);

(10) Amounts added for equalization under the provisions of sections 54:3-17 to 54:3-19 of this Title;

(11) Amounts deducted for equalization under the provisions of sections 54:3-17 to 54:3-19 of this Title;

(12) Net valuation on which county, State and State school taxes are apportioned;

(13) The number of polls assessed;

(14) The amount of dog taxes assessed;

(15) The property exempt from taxation under the following special classifications:

a. Public school property;

b. Other school property;

c. Public property;

d. Church and charitable property;

e. Cemeteries and graveyards;

f. Other exemptions not included in foregoing classifications subdivided showing exemptions of real property and exemptions of personal property;

g. The total amount of exempt property.

(16) State road tax;

(17) State school tax;

(18) County taxes apportioned, exclusive of bank stock taxes;

(19) Local taxes to be raised, exclusive of bank stock taxes, subdivided as follows:

a. District school tax;

b. Other local taxes.

(20) Total amount of miscellaneous revenues, including surplus revenue appropriated, for the support of the taxing district budget, which, for a municipality operating under the State fiscal year, shall be the amounts for the fiscal year ending June 30 of the year in which the table is prepared;

(21) District court taxes;

(22) Library tax;

(23) Bank stock taxes due taxing district;

(24) Tax rate for local taxing purposes to be known as general tax rate to apply per $100.00 of valuation, which general tax rate shall be rounded up to the nearest one-half penny after receipt in any year of a municipal resolution submitted to the county tax board on or before April 1 of that tax year requesting that the general tax rate be rounded up to the nearest one-half penny.

For municipalities operating under the State fiscal year, the amount for local municipal purposes shall be the amount as certified pursuant to section 16 of P.L.1994, c.72 (C.40A:4-12.1). The table shall also include a footnote showing the amount raised by taxation for municipal purposes as shown in the State fiscal year budget ending June 30 of the year the table is prepared.

In addition to the above such other matters may be added, or such changes in the foregoing items may be made, as may from time to time be directed by the Director of the Division of Taxa-

tion. The forms for filling out tables of aggregates shall be prescribed by the director and sent by him to the county treasurers of the several counties to be by them transmitted to the county board of taxation. Such table of aggregates shall be correctly added by columns and shall be signed by the members of the county board of taxation and shall within three days thereafter be transmitted to the county treasurer who shall file the same and forthwith cause it to be printed in its entirety and shall transmit certified copy of same to the Director of the Division of Taxation, the State Auditor, the Director of the Division of Local Government Services in the Department of Community Affairs, the clerk of the board of freeholders, and the clerk of each municipality in the county.

2. This act shall take effect January 1 next following enactment.

Approved January 5, 1996.

CHAPTER 346

AN ACT concerning the New Jersey State Commission on Aging and amending and supplementing P.L.1957, c.72.

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

1. Section 2 of P.L.1957, c.72 (C.26:1A-108) is amended to read as follows:

C.26:1A-108 New Jersey State Commission on Aging created.

2. There is hereby created the New Jersey State Commission on Aging, consisting of 15 citizen members.

2. Section 3 of P.L.1957, c.72 (C.26:1A-109) is amended to read as follows:

C.26:1A-109 Members, terms, vacancies, meetings, bylaws.

3. The members of the Commission on Aging shall be appointed by the Governor, with the advice and consent of the Senate. The members of the commission shall be selected from among the citizens of the State who have demonstrated interest in the problems of aging and who are generally representative of the varied population of the State. In addition to the 15 citizen mem-

bers, there shall be two legislative ex officio members of the commission, one appointed by the President of the Senate and one appointed by the Speaker of the General Assembly. The legislative ex officio members shall be appointed for their term of office. The director shall be an ex officio member of the advisory commission. Also, one representative chosen by and from the executive directors of county offices on aging operating under the provisions of P.L.1970, c.248 (C.40:23-6.38 et seq.) shall be an ex officio member of the commission.

Three members of the commission shall be appointed for one year, three for two years and three for three years, and their successors shall be appointed for terms of three years. All members may hold over and serve on the commission after the expiration of their respective terms, until their respective successors are appointed and shall qualify. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. A chairman and other officers of the commission shall be elected for a term of two years by the members from among the members appointed by the Governor.

The Commission on Aging shall meet at regular intervals and at least quarterly. The times and places for the said meetings shall be fixed by the commission and special meetings may be called by the chairman on not less than 10 days' written notice to each member. The commission may adopt bylaws for the regulation of its affairs.

3. Of the six additional citizen members initially appointed pursuant to this amendatory and supplementary act, two shall be appointed for one-year terms, two shall be appointed for two-year terms and two for three-year terms. Their successors shall be appointed for terms of three years. These members may hold over and serve on the commission after the expiration of their respective terms until their respective successors are appointed and shall qualify. Vacancies occurring other than by expiration of term shall be filled for the unexpired term.

4. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 347

AN ACT conforming the motor fuels use tax to the International Fuel Tax Agreement to provide for entry therein, amending and supplementing P.L.1963, c.44, and repealing sections 12, 13, 16, 17 and 18 of P.L.1963, c.44.

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

1. Section 2 of P.L.1963, c.44 (C.54:39A-2) is amended to read as follows:

C.54:39A-2 Definitions.

2. For the purpose of this act, unless inconsistent with the context:

(a) "User" means every person who operates or causes to be operated any qualified motor vehicle on any highway in this State. The term shall include a rental company in the case of a rental vehicle.

(b) "Qualified motor vehicle" means a motor vehicle that is not an exempt vehicle and that is used, designed or maintained for transportation of persons or property; and

(1) having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds;

(2) having three or more axles, regardless of weight; or

(3) that is used in combination, when the weight of such combination is in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight.

Notwithstanding this definition of qualified motor vehicle, if the director enters into the agreement authorized pursuant to subsection b. of section 24 of P.L.1963, c.44 (C.54:39A-24), the director shall, as may be required by the agreement, issue a card and markers pursuant to this act to the user of an exempt vehicle other than a recreational vehicle that is a New Jersey base jurisdiction vehicle and that would be a qualified motor vehicle but for being an exempt vehicle and the director shall administer the reporting and collection of tax imposed by other member jurisdictions with respect to such vehicle.

(c) "Exempt vehicle" means:

(1) Any vehicle owned or operated by an agency of this State or any political subdivision thereof, or any quasi-governmental authority of which this State is a participating member, or any agency of the federal government or the District of Columbia, or of any state or province or political subdivision thereof.

(2) School bus as defined in R.S.39:1-1.

(3) Vehicles operated under authority of dealer, manufacturer, converter and transporter general registration plates such as prescribed in R.S.39:3-18 and similar laws of other states.

(4) Special mobile equipment not designed or used primarily for the transportation of persons or property.

(5) Vehicles operated not for profit by any religious or charitable organization.

(6) Vehicles operated by a public utility as defined in R.S.48:2-13, or under a contract with the New Jersey Transit Corporation or under a contract with a county for special or rural transportation bus service subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L.1979, c.150 (C.27:25-1 et seq.) whose operations are limited to the State of New Jersey, or vehicles providing commuter bus service which receive or discharge passengers in New Jersey.

(7) Vehicles operated, not for hire, by a farmer as defined in R.S.39:3-25.

(8) Vehicles used to transport farm labor.

(9) Recreational vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. A recreational vehicle is a vehicle that is not used in connection with any business endeavor.

(d) "Operations" means operations of all qualified motor vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by, contracted for use by, or leased by the user who operates or causes them to be operated, except operations of an omnibus in a regular route bus operation as defined in R.S.48:4-1 and under operating authority conferred pursuant to R.S.48:4-3.

(e) The term "motor fuels" means any combustible liquid or gaseous substance used, or suitable, for the generation of power to propel motor vehicles.

(f) "Motor fuel tax " means a tax imposed at a rate equal to the sum of:

(1) the tax rate per gallon on motor fuels imposed under R.S.54:39-1 et seq.; and

(2) the tax rate per gallon on motor fuels imposed pursuant to section 3 of P.L.1990, c.42 (C.54:15B-3).

(g) "Director" shall mean the Director of the Division of Motor Vehicles in the Department of Transportation.

(h) "Purchaser" means the person, firm or corporation who or which purchased the fuel, and paid the motor fuel tax thereon, used in the qualified motor vehicles of the user.

(i) (Deleted by amendment, P.L.1995, c.347).

(j) (Deleted by amendment, P.L.1995, c.347).

(k) "Rental vehicle" means a vehicle owned by a rental company and rented to the general public on an hourly, daily, trip, or other short-term basis.

(l) "Rental company" means a person engaged in the business of renting vehicles to the general public, including motor carriers, on an hourly, daily, trip, or other short-term basis.

(m) "Commuter bus service" means regularly scheduled passenger service provided by qualified motor vehicles within or across the geographical boundaries of New Jersey and utilized by passengers using reduced fare, multiple ride or commutation tickets and shall not include charter bus operations or special bus operations as defined in R.S.48:4-1 or buses operated for the transportation of enrolled children and adults referred to in subsection c. of R.S.48:4-1.

2. Section 3 of P.L.1963, c.44 (C.54:39A-3) is amended to read as follows:

C.54:39A-3 User's tax.

3. Every user shall pay a tax equivalent to the rate per gallon of the motor fuel tax which is in effect for the reporting period, calculated on the amount of motor fuels used in its operations within this State.

3. Section 4 of P.L.1963, c.44 (C.54:39A-4) is amended to read as follows:

C.54:39A-4 Quarterly reports; exemptions.

4. Every user shall, on or before the last day of January, April, July and October of each year, make to the director such aggregate reports of the user's entire operations during the quarter ending on the last day of the preceding month as the director may require.

If the director shall find that the administration and purpose of this act would not be adversely affected thereby, the director may in the director's discretion exempt any user who has insufficient liability to warrant quarterly reporting, as determined by the director, from the quarterly reporting requirements of this act. Said user may be permitted to make an annual report of the user's entire operations subject to such terms, conditions or limitations as the director may prescribe.

4. Section 6 of P.L.1963, c.44 (C.54:39A-6) is amended to read as follows:

C.54:39A-6 Computation of fuel use; records.

6. The amount of motor fuels used in the operations of any user within this State shall be computed to be such proportion of the total amount of such motor fuels used in the user's entire operations within and without this State as the total number of

miles traveled within this State bears to the total number of miles traveled within and without this State. Every qualified motor vehicle operated by the user may be equipped with an accurate mileage recording instrument in good working order, as prescribed by the director, and its reading shall be taken and recorded at such intervals as the director shall prescribe.

5. Section 8 of P.L.1963, c.44 (C.54:39A-8) is amended to read as follows:

C.54:39A-8 Credit for motor fuel tax paid.

8. Every user subject to the tax hereby imposed shall be entitled to a credit against such tax paid equivalent to the rate per gallon of the motor fuel tax which is in effect for the reporting period, for all motor fuels purchased within this State by the user or a lessor of the user at the time of purchase for use in the user's operations. Evidence of the purchase of such fuel and the payment of such tax shall be maintained by the user, as part of the records required by this act, in the form of a fuel purchase receipt or invoice in such form as the director may prescribe.

(a) (1) When the amount of the credit herein provided to which any user is entitled for any tax quarter exceeds the amount of the tax for which such user is liable for the same tax quarter, such excess shall be allowed as a credit. Such credit, if not refunded, shall be allowed as an offset of the liabilities of the user for the eight calendar quarters following the reporting period from which the credit derived or until the credit is exhausted, whichever occurs sooner.

(2) The user shall receive a refund of any accumulated credits claimed, notwithstanding the provisions of R.S.54:49-14 to the contrary, within the two-year period commencing with the end of the reporting period from which the credit derived; provided however, that refunds shall be withheld if the user is delinquent on any amounts due to be paid or collected under this act unless the unpaid amount is under appeal pursuant to the requirements of this act.

(3) Notwithstanding the provisions of section 7 of P.L.1992, c.175 (C.54:49-15.1), to the contrary, interest shall be allowed on a refund determined to be properly due at the rate of one percent per month or part thereof, and interest shall commence to accrue on the date of the filing by the taxpayer of a claim for refund of an amount paid; provided however, that no interest shall be allowed or paid on an amount refunded within 90 days after the receipt of the claim for refund by a user.

(b) (Deleted by amendment, P.L.1995, c.347).
(c) (Deleted by amendment, P.L.1995, c.347).
(d) (Deleted by amendment, P.L.1995, c.347).
(e) (Deleted by amendment, P.L.1995, c.347).
(f) (Deleted by amendment, P.L.1995, c.347).

6. Section 9 of P.L.1963, c.44 (C.54:39A-9) is amended to read as follows:

C.54:39A-9 Records.

9. Every user shall keep records, in such form as the director reasonably may prescribe, as will enable the user to report and enable the director to determine the total number of over-the-road miles traveled by the user's entire fleet of qualified motor vehicles, the total number of over-the-road miles traveled in New Jersey by said entire fleet, the total number of gallons of motor fuel used by said entire fleet, the total number of gallons of motor fuel purchased in New Jersey for said entire fleet, and such additional information as the director may prescribe as is required to determine the taxes payable or collectable under this act. All such records shall be safely preserved for a period of four years in such manner as to ensure their security and availability for inspection by the director or any authorized assistant engaged in the administration of this act. Upon application in writing, stating the reasons therefor, the director may, in the director's discretion, consent to the destruction of any such records at any time within said period. The director or the director's authorized agents and representatives may, at any reasonable time, inspect the books and records of any user subject to the tax imposed by this act. The director shall provide by regulation for any such examination of books and records to be conducted at the office or offices of the user where such books and records are maintained.

7. Section 10 of P.L.1963, c.44 (C.54:39A-10) is amended to read as follows:

C.54:39A-10 Identification cards, markers; registration fee; permit; revocation.

10. a. Upon application to the director, in such form as the director may prescribe, the director shall issue to every user a motor fuels user identification card, which shall be safely preserved in the user's offices for as long as the card is valid. The user shall place a photographic copy of said card in the cab of each qualified motor vehicle used in the user's operations. The

director shall also issue for each qualified motor vehicle operated by the user one or more identification markers, which shall be affixed to the vehicle in such manner as shall be prescribed by the director. The fee for each original such marker and any replacement marker shall be $5.00. Every identification card and marker shall remain the property of the State and may be recalled for any violation of this act or of the regulations promulgated hereunder, or for failure to pay any monies due the State under this act or any other law administered by the director. Identification cards and markers shall be issued on an annual basis as of January 1 of the year and shall be valid through the next succeeding December 31. The form and content of the card and marker or markers shall be as prescribed by the director. Any card and marker issued pursuant to this act may be deemed by the director as satisfying the equivalent requirements of any other law administered by the director, and any marker and card issued by the director pursuant to any other law, regulation, reciprocity agreement or arrangement, or declaration may be deemed as satisfying the equivalent requirements of this act. It shall be illegal to operate or cause to be operated in this State any qualified motor vehicle, unless the vehicle bears the identification marker and carries the copy of the identification card required by this section; provided, however, that upon the request of a user the director may issue by mail or telecommunication a permit valid for the operation of a qualified motor vehicle for a period not exceeding 30 days, pending the application for and issuance of an identification card or marker, or both. The fee for such permit shall be $5.00, which may be credited against the identification marker fee applicable to the same vehicle. A user whose vehicles in the aggregate make not more than six trips into or through this State in a 12-month period may be issued single trip permits valid for 96 hours for each round trip so made. The fee for such trip permit shall be $25.00, which shall be in lieu of reports, fees and taxes which may otherwise be applicable to said trip under this act.

b. No card or markers shall be issued to a user previously issued a card or other license that is under revocation, or a user whose application contains any misrepresentation, misstatement, or omission of information required in the application.

c. A card may be suspended or revoked for failure to comply with all applicable provisions of this act, including the improper use of cards or markers.

8. Section 11 of P.L.1963, c.44 (C.54:39A-11) is amended to read as follows:

C.54:39A-11 Examination of returns, assessment of additional taxes, etc.

11. a. The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., except as specifically provided pursuant to P.L.1963, c.44 (C.54:39A-1 et seq.).

b. Notwithstanding the provisions of R.S.54:49-1 to the contrary, for the taxes imposed or collected pursuant to P.L.1963, c.44 (C.54:39A-1 et seq.), no assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made or begun, except as otherwise provided in R.S.54:49-5 and R.S.54:49-7, until 30 days after a notice of deficiency has been mailed to the taxpayer and the time for the filing of a protest with the director has expired, or, if a protest with respect to the taxable period has been filed with the director, until the decision of the director has become final.

c. Notwithstanding the provisions of subsection a. of R.S.54:49-18 to the contrary, a taxpayer may appeal a finding or assessment of the director within 30 days after the giving of the notice of finding or assessment.

d. (1) Notwithstanding the provisions of R.S.54:49-4 or R.S.54:49-9 to the contrary, there shall be assessed a penalty of $50 or 10% of the taxes due, whichever is greater, for the failure to file a report, for the filing of a late report or for the underpayment of taxes due.

(2) Notwithstanding the provisions of R.S.54:49-11 to the contrary, the director may waive the penalties imposed pursuant to paragraph (1) of this subsection if the director determines there is reasonable cause for the failure to file a report, for the filing of a late report or for the underpayment of taxes due.

e. (1) Notwithstanding the provisions of R.S.54:49-3 or R.S.54:49-6 to the contrary, the director shall assess interest at the rate of 1% per month or part thereof, from the date the tax was due until the tax is paid.

(2) The director shall waive the payment of any part of any interest attributable to the taxpayer's reasonable reliance on erroneous advice furnished to the taxpayer in writing by an employee of the Division of Motor Vehicles acting in the employee's official capacity, provided that the interest did not result from a failure of the taxpayer to provide adequate or accurate information.

9. Section 19 of P.L.1963, c.44 (C.54:39A-19) is amended to read as follows:

C.54:39A-19 Claim for refund.

19. Except with respect to payment of a special assessment imposed by the director pursuant to section 11 of P.L.1963, c.44 (C.54:39A-11), or R.S.54:49-5 or R.S.54:49-7, a user, at any time within four years after payment of a tax, may file with the director a claim under oath for refund, in such form as the director may prescribe, stating the grounds therefor, but no claim for refund shall be permitted to be filed after proceedings on appeal have been commenced as provided in R.S.54:49-18. If, upon examination of such claim for refund, it shall be determined by the director that there has been an overpayment of tax, the amount of such overpayment shall be credited against any liability of the user under this act and if there be no such liability, the user shall be entitled to a refund of the tax so overpaid. If the director shall reject the claim for refund in whole or in part, the director shall make an order accordingly and serve a notice upon the user. This section shall not apply to applications for refunds provided for under section 8 of P.L.1963, c.44 (C.54:39A-8).

10. Section 20 of P.L.1963, c.44 (C.54:39A-20) is amended to read as follows:

C.54:39A-20 False statements; violations; penalties.

20. a. (1) Any person who shall willfully and knowingly make a false statement orally, or in writing, or in the form of a receipt for the sale of motor fuel, for the purpose of obtaining or attempting to obtain or to assist any other person, partnership or corporation to obtain or attempt to obtain a credit or refund or reduction of liability for taxes under this act, shall be guilty of a misdemeanor.

(2) Any person who willfully violates any other provision of this act or any provision of the rules and regulations prescribed under this act, except provisions of this act or of such rules and regulations for the violation of which a penalty is otherwise provided in this act, shall be subject to a fine of not more than $500.00 to be recovered in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.). For the purposes of such proceeding, such violation shall be deemed an act committed in part at the office of the director in Trenton.

b. In addition to the provisions and remedies contained in the Penalty Enforcement Law, the following provisions and remedies

shall be applicable in any proceeding brought for a violation of any of the provisions of this act:

(1) The several municipal courts shall have jurisdiction of any such proceeding in addition to the courts prescribed in said Penalty Enforcement Law, provided, however, that the maximum fine which may be imposed by a municipal court in a proceeding involving failure to exhibit an identification marker or a registration card shall be $50.00;

(2) The complaint in any such proceeding may be made on information and belief by the director or by any member of the State Police;

(3) A warrant may be issued in lieu of summons;

(4) Any police or peace officer shall be empowered to serve and execute process in any such proceeding;

(5) The hearing in any such proceeding shall be without a jury;

(6) Any such proceeding may be brought in the name of the Director of the Division of Motor Vehicles, in the Department of Transportation or in the name of the State of New Jersey;

(7) Any sums received in payment of any fines imposed in any such proceeding shall be paid to the Director of the Division of Motor Vehicles and shall be paid by the director into the State Treasury.

11. Section 24 of P.L.1963, c.44 (C.54:39A-24) is amended to read as follows:

C.54:39A-24 Regulations, International Fuel Tax Agreement.

24. a. The director shall from time to time promulgate such regulations as may be necessary for the effective enforcement of this act.

b. The director is authorized to enter into the International Fuel Tax Agreement for the reporting and payment of tax to a single base state and the administration of motor fuel use taxes and their distribution to member states. Notwithstanding any provisions of this act to the contrary, in furtherance of the International Fuel Tax Agreement the director is authorized to:

(1) prescribe uniform rules in compliance with the International Fuel Tax Agreement to determine the base state for users, user records requirements, audit procedures, exchange of information, persons eligible for licensing with this State as their base state, the form of licenses and markers issued to this State's base licensees and the recognition of the licenses and markers issued by other base states, to maintain base jurisdiction accounting for such users, to require bonds to secure the payment of taxes, to specify reporting periods, to determine the methods for collecting

and forwarding taxes and interest to other member taxing jurisdictions and such other provisions as will facilitate the administration of the agreement;

(2) forward to the proper officers of another member jurisdiction or their agent any information in the director's possession relating to the manufacture, distribution or sale of motor fuels, the administration of taxes pursuant to the agreement, or the location of the property or personnel of motor fuel users in this State or another member jurisdiction;

(3) assume the base jurisdiction auditing responsibilities; and

(4) adopt such other regulations as may be required to administer, enforce or maintain compliance with the agreement.

c. Notwithstanding the provisions of any other law to the contrary, the director may, in connection with the administration of taxes under an agreement entered into pursuant to subsection b. of this section, enter into an agreement with other member jurisdictions and any financial institutions with respect to the payment of taxes or interest to such financial institutions and the filing of tax reports with such financial institutions as agents of the director and such other member jurisdictions.

C.54:39A-29 "Motor fuel use tax distribution fund" created.

12. There is created within the State General Fund a special fund to be known as the "motor fuel use tax distribution fund" into which there shall be deposited all fuel use taxes, and interest thereon, collected for other member taxing jurisdictions of the International Fuel Tax Agreement. Monies in the "motor fuel use tax distribution fund" shall be held in trust by the State on behalf of other member taxing jurisdictions until distributed pursuant to the agreement, and shall not be considered funds of the State and shall not be appropriated for any purpose other than distribution pursuant to the agreement.

C.54:39A-1.1 Operation, effect of 1995 amendments.

13. a. Notwithstanding the provisions of section 1 of P.L.1995, c.347, to the contrary, the change in definition of subject vehicles in subsection (b) of section 2 of P.L.1963, c.44 (C.54:39A-2) made by section 1 of P.L.1995, c.347 shall not affect any obligation, lien or duty to pay taxes, interest or penalties which have accrued or may accrue by virtue of any taxes imposed pursuant to the provisions of the law amended by this act, or which may be imposed with respect to any redetermination, correction, recomputation or deficiency assessment; and provided that all taxes and returns which would have been due and payable under the provisions of P.L.1963, c.44, prior to its amendment by P.L.1995,

c.347 shall be due and payable as if P.L.1995, c.347 had not been enacted; and provided that P.L.1995, c.347 shall not affect the legal authority of the State to audit records and assess and collect taxes due or which may be due, together with such interest and penalties as have accrued or would have accrued thereon pursuant to P.L.1963, c.44, prior to its amendment by P.L.1995, c.347; and provided that P.L.1995, c.347 shall not affect any determination of, or affect any proceeding for, the enforcement thereof.

b. Notwithstanding the provisions of section 1 of P.L.1995, c.347 to the contrary, the change in definition of "motor fuel tax" in subsection (f) of section 2 of P.L.1963, c.44 (C.54:39A-2) made by section 1 of P.L.1995, c.347 shall not affect taxes, interest or penalties, continued pursuant to subsection a. of this section.

c. Notwithstanding the provisions of section 5 of P.L.1995, c.347 to the contrary, the amount of credit against tax paid allowed pursuant to subsection (a) of section 8 of P.L.1963, c.44 (C.54:39A-8), for a tax quarter ending prior to July 1, 1996 shall not be refundable, and shall be allowed as a credit in the next succeeding tax quarter, except as provided in subsection d. of this section.

d. Amounts of credit in excess of the tax due for the reporting period for bulk fuels pumped into the service tanks of vehicles for tax quarters ending prior to July 1, 1996 and refundable pursuant to subsection (b) of section 8 of P.L.1963, c.44 (C.54:39A-8), but for the amendments made thereto by section 5 of P.L.1995, c.347 shall be refunded if the user files an application for the refund within one year following the end of the reporting quarter in which the fuel was pumped into the service tanks of the vehicles, and shall otherwise be subject to the provisions of subsection (a) of section 8 of P.L.1963, c.44.

e. Notwithstanding the provisions of section 10 of P.L.1963, c.44 (C.54:39A-10) to the contrary, cards and markers issued prior to July 1, 1996, and still valid on that date shall remain valid through December 31, 1996, except as provided in subsection c. of section 10 of P.L.1963, c.44.

Repealer.

14. Sections 12, 13, 16, 17 and 18 of P.L.1963, c.44 (C.54:39A-12, 54:39A-13, 54:39A-16, 54:39A-17 and 54:39A-18) are repealed.

15. This act shall take effect immediately and sections 1 through 9 and section 12 of this act shall remain inoperative until July 1, 1996.

Approved January 5, 1996.

CHAPTER 348

AN ACT concerning insurance premium financing and amending P.L.1968, c.221.

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

1. Section 12 of P.L.1968, c.221 (C.17:16D-12) is amended to read as follows:

C.17:16D-12 Delinquency charges.

12. a. Delinquency charges. A premium finance agreement may provide for the payment by the insured of a delinquency charge of $1.00 to a maximum of 5% of the delinquent installment but not to exceed $5.00 on any installment which is in default for a period of 10 days or more, except that, if the loan is primarily for other than personal, family or household purposes, the delinquency charge may be 1.5% of the amount of the delinquent installment, but there may be a minimum delinquency charge of $25. If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge; such charge shall be $5.00, less any delinquency charge on the installment in default.

b. A delinquency charge under this section may be collected only once on any installment, however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time afterward.

c. No delinquency charge may be collected under this section on an installment which is paid in full within 10 days after its scheduled due date even though an earlier maturing installment or a delinquency charge on an earlier installment has not been paid in full.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 349

AN ACT requiring the certification or licensure of real estate appraisers and amending the title and body of P.L.1991, c.68.

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

1. The title of P.L.1991, c.68 is amended to read as follows:

Title amended.

An act to certify and license real estate appraisers, amending P.L.1971, c.60, P.L.1974, c.46, and P.L.1978, c.73, supplementing Title 45 of the Revised Statutes and making an appropriation.

2. Section 21 of P.L.1991, c.68 (C.45:14F-21) is amended to read as follows:

C.45:14F-21 Only license, certificate holders may perform licensed, certified appraisal.

21. a. A person who is not certified pursuant to the provisions of this act shall not describe or refer to any appraisal or other evaluation which he performs on real estate located in this State as "a certified appraisal."

b. A person who is not licensed pursuant to the provisions of this act shall not describe or refer to any appraisal or other evaluation which he performs on real estate located in this State as "a licensed appraisal."

c. Except as otherwise provided in subsection e. of this section, no person other than a State licensed real estate appraiser, a State certified real estate appraiser or a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified appraiser shall perform or offer to perform an appraisal assignment in regard to real estate located in this State including, but not limited to, any transaction involving a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution.

Nothing in P.L.1991, c.68 (C.45:14F-1 et seq.) shall be construed to preclude a person not licensed or certified pursuant to this act from giving or offering to give, for a fee or otherwise, counsel and advice on pricing, listing, selling and use of real property, directly to a property owner or prospective purchaser if the intended use of the counsel or advice is solely for the individual knowledge of or use by the property owner or prospective purchaser.

d. Nothing in this act shall be construed to preclude a person not certified or licensed pursuant to this act from assisting in the preparation of an appraisal to the extent permitted under subsection (d) of section 1122 of Title XI of Pub. L.101-73 (12 U.S.C. §3351(d)).

e. (1) An appraisal of real estate in this State with a value of $150,000 or less may be performed by a person who is not a State certified real estate appraiser or a State licensed real estate appraiser.

(2) An appraisal of real estate in this State, other than an appraisal for a federally related transaction, may be performed by a person who is not a State certified real estate appraiser or a State licensed real estate appraiser if the person for whom it is performed is using the appraisal as information in making his or its own personal or business decisions.

3. Section 8 of P.L.1991, c.68 (C.45:14F-8) is amended to read as follows:

C.45:14F-8 Powers, duties of the board.

8. The board shall, in addition to such other powers and duties as it may possess by law:

a. Administer and enforce the provisions of this act;

b. Examine and pass on the qualifications of all applicants for licensure or certification under this act;

c. Issue and renew licenses and certificates of real estate appraisers;

d. Prescribe examinations for certification under this act, which examinations shall meet the standards for certification examinations for real estate appraisers established by the Appraisal Foundation, and prescribe examinations for licensure under this act, which examinations shall meet the standards for licensing examinations for real estate appraisers acceptable to the Appraisal Subcommittee;

e. Suspend, revoke or refuse to issue or renew a license or certificate and exercise investigative powers pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.);

f. Establish fees for applications for licensure and certification, examinations, initial licensure and certification, renewals, late renewals, temporary licenses, temporary certifications and for duplication of lost licenses or certificates, pursuant to section 2 of P.L.1974, c.46 (C.45:1-3.2);

g. Establish a code of professional ethics for persons licensed or certified under this act which meets the standards established by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation;

h. Establish standards for the certification of real estate appraisers which meet the standards established by the Appraisal Foundation, and establish standards for the licensing of real estate appraisers which meet standards acceptable to the Appraisal Subcommittee;

i. Conduct hearings pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). In any hearing or investigative inquiry, the board shall have the right to administer oaths to witnesses, and shall have the power to issue subpoenas for the compulsory attendance of witnesses and the production of pertinent books, papers or records;

j. Take such action as is necessary before any board, agency or court of competent jurisdiction for the enforcement of the provisions of this act;

k. Maintain a registry of the names and business addresses of licensees and the names and business addresses of certified individuals and shall forward such materials to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

l. Approve providers of real estate appraiser education courses and establish and revise experience and education requirements for the licensure and certification of real estate appraisers in this State;

m. Approve providers of real estate appraiser continuing education courses and establish and revise continuing education requirements for the renewal of licenses and certificates;

n. Adopt and promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act, except that the initial rules and regulations shall be promulgated by the director;

o. Perform any other functions and duties which may be necessary to carry out the provisions of this act; and

p. Adopt and promulgate rules and regulations by which market analyses by licensed real estate brokers, broker-salespersons and salespersons may be used as credit for experience toward licensure or certification under P.L.1991, c.68 (C.45:14F-1 et seq.).

4. This act shall take effect on the 365th day after enactment.

Approved January 5, 1996.

CHAPTER 350

AN ACT concerning senior citizen and disabled resident transportation and amending P.L.1983, c.578.

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

1. Section 7 of P.L.1983, c.578 (C.27:25-31) is amended to read as follows:

C.27:25-31 Allocation of moneys.

7. a. Moneys under this program shall be allocated by the corporation in the following manner:

(1) 85% shall be available to be allocated to eligible counties for the purposes specified under subsection a. of section 4 of this act.

(2) 15% shall be available for use by the corporation for the purposes specified under subsection b. of section 4 of this act and for the general administration of the program, but no more than 10% of the total moneys allocated under this program shall be used for the general administration of the program.

b. The amount of money which each eligible county may receive shall be based upon the number of persons resident in that county of 60 years of age or older expressed as a percentage of the whole number of persons resident in this State of 60 years or older, as provided by the U.S. Bureau of the Census. As similar data become available for the disabled population, such data shall be used in conjunction with the senior citizen data to determine the county allocation formula. No eligible county shall receive less than $150,000.00 during a fiscal year under this program, except that during the first fiscal year no county shall receive less than $50,000.00 nor more than $150,000.00.

c. The governing body of an eligible county, or a group or groups designated as an applicant or as applicants by the county after a public hearing in which senior citizens and the disabled shall have the opportunity to comment on the appropriateness of such designation, may make application to the board for moneys available under subsection b. of this section. The application shall be in the form of a proposal to the board for transportation assistance and shall specify the degree to which the proposal meets the purposes of the program under subsection a. of section 4 of this act and the implementation criteria under the program guidelines and the proposal shall have been considered at a public hearing. The board shall allocate moneys based upon a review of the merits of the proposals in meeting the purposes of the program, and the implementation criteria, under the program guidelines. The governing body of an eligible county shall schedule a public hear-

ing annually for interested parties to provide the governing body with any facts, materials, or recommendations that would be of assistance regarding the efficacy of the program established under subsection a. of section 4 of this act.

2. This act shall take effect immediately but shall remain inoperative until July 1st next following enactment.

Approved January 5, 1996.

CHAPTER 351

AN ACT permitting succession between certain qualified fiduciaries and supplementing Title 17 of the Revised Statutes.

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

C.17:16R-1 Substitution of fiduciaries.

1. A qualified fiduciary (herein "successor fiduciary") may be substituted in the place and stead of another qualified fiduciary (herein "original fiduciary") which is desirous of being discharged from acting further as fiduciary for one or more fiduciary accounts, provided that the successor fiduciary obtains the approval of the Superior Court pursuant to the terms of this act.

C.17:16R-2 Application to become successor fiduciary.

2. a. The qualified fiduciary desiring to become the successor fiduciary shall make application to the Superior Court, which application may be made ex parte. The application shall contain information sufficient for the court to apply the standards set forth in subsection b. of this section and shall include a certification by the original fiduciary that it understands and agrees that it shall be bound as a party to any order entered by the court in the proceeding on the application.

b. Upon such application, the Superior Court, except for good cause shown, shall grant the application for substitution if it finds either:

(1) that the fiduciary accounts subject to the substitution constitute all, or substantially all, of a fiduciary category, or categories, and the successor fiduciary has adequate facilities, personnel and locations to provide fiduciary services to those persons with an interest in the fiduciary accounts; or

(2) that the primary bank regulator for each fiduciary has approved the transfer as being in the best interest of the fiduciary which the regulator regulates, and that the transfer will not be a disadvantage to the interest of the public.

C.17:16R-3 Appointment of successor fiduciary.

3. a. If the Superior Court approves the application, it shall make an order appointing the applicant qualified fiduciary as successor fiduciary in respect to the fiduciary capacities and relationships set forth in the application, with the same powers and duties in respect to the fiduciary capacities and relationships as those possessed by the original fiduciary. After the order of substitution has been entered, every instrument executed or otherwise effected before or after the entry, which purports to appoint the original fiduciary to any fiduciary capacity or relationship for which a successor fiduciary has been appointed pursuant to this section, shall be deemed to constitute an appointment of the successor fiduciary. The original fiduciary, which has been succeeded by a successor fiduciary as provided in this section, may present an accounting, in which the successor fiduciary may join, of its administration of the fiduciary capacities or relationships to which the successor fiduciary has been appointed.

b. Written notice of the substitution shall be given to those persons or entities to whom the original fiduciary would have in due course provided periodic account statements at the address shown on the current account records. The notice may be included with the periodic account statements and in any event shall be mailed within 60 days of the date of the order approving the substitution. The notice shall include the name and telephone number of a person or persons representing the substitute fiduciary to whom questions regarding the substitution may be directed.

C.17:16R-4 Definitions relative to qualified fiduciaries.

4. For the purpose of this act:

a. "Qualified fiduciary" means a bank or savings bank authorized to exercise fiduciary powers pursuant to section 28 of P.L.1948, c.67 (C.17:9A-28), a federally chartered bank authorized to exercise fiduciary powers pursuant to section 1 of Pub.L.87-722 (12 U.S.C. §92a), a savings and loan association authorized to exercise fiduciary powers pursuant to section 48 of P.L.1963, c.144 (C.17:12B-48) or a federally chartered association authorized to exercise fiduciary powers pursuant to subsection (n) of 12 U.S.C. §1464.

b. "Fiduciary category" means one of the following three types of fiduciary accounts or relationships:

(1) A guardian, executor, administrator with the will annexed, substituted administrator, administrator, trustee, substituted trustee, or non testamentary trustee, all as referred to in N.J.S.3B:18-8, 3B:18-12 and 3B:18-23; a conservator appointed pursuant to P.L.1983, c.192 (C.3B:13A-1 et seq.); and a custodian if a gift to a minor pursuant to P.L.1963, c.177 (C.46:38-13 et seq.).

(2) Trustee of a qualified retirement plan maintained pursuant to 26 U.S.C. § 401(k); trustee or custodian under an individual retirement account or annuity created pursuant to 26 U.S.C. § 408(a) and (b); or as custodian under an annuity plan maintained pursuant to 26 U.S.C. § 403(a) or (b).

(3) All other fiduciary relationships and capacities not included in the preceding paragraphs (1) and (2) of this subsection.

c. "Substantially all" of any category shall mean all accounts in that category except: (1) those in which substitution pursuant to this act is specifically prohibited by the document or documents creating the fiduciary relationship, or (2) those accounts for which there is a unique relationship or are special circumstances which distinguish the account from others in the same category or which make it impractical to effect the substitution.

5. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 352

AN ACT creating two additional Superior Court judgeships and amending N.J.S.2B:2-1.

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

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

Number of judges.

2B:2-1. Number of Judges. a. The Superior Court shall consist of 406 judges.

b. (1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were resident of each county:

Atlantic	11
Bergen	27
Burlington	9
Camden	15
Cape May	4
Cumberland	7
Essex	34
Gloucester	9
Hudson	24
Hunterdon	3
Mercer	9
Middlesex	24
Monmouth	17
Morris	15
Ocean	15
Passaic	16
Salem	2
Somerset	6
Sussex.	4
Union	20
Warren	3

(2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4
Camden	8
Cape May	2
Cumberland	4
Essex	14
Gloucester	6
Hudson	6
Hunterdon	2
Mercer	6
Middlesex	8
Monmouth	4
Morris	6
Ocean	8

Passaic	6
Salem	2
Somerset	4
Sussex	2
Union	6
Warren	2

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 353

AN ACT concerning motor oil, and amending P.L.1987, c.102.

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

1. Section 43 of P.L.1987, c.102 (C.13:1E-99.35) is amended to read as follows:

C.13:1E-99.35 Sale of motor oil; rules, regulations.

43. a. On or after July 1, 1987, no person shall sell, or offer for sale, at retail or at wholesale for direct retail sale in this State any motor oil in containers for use off the premises unless:

(1) Every container of lubricating or other oil is clearly marked or labeled as containing a recyclable material which shall be disposed of after use only at a used oil collection center; and

(2) The motor oil retailer shall conspicuously post and maintain, at or near the point of sale, a durable and legible sign, not less than 11 inches by 15 inches in size, informing the public of the importance of the proper collection and disposal of used oil, and how and where used oil may be properly disposed. For the purposes of this section, "motor oil retailer" means any person who sells to consumers more than 500 gallons of lubricating or other oil annually in containers for use off the premises where sold.

b. The Commissioner of the Department of Environmental Protection shall adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) any rules and regulations necessary to implement the provisions of this section.

2. Section 44 of P.L.1987, c.102 (C.13:1E-99.36) is amended to read as follows:

C.13:1E-99.36 Sign posted, "used oil collection center" defined; rules, regulations.

44. a. On or after July 1, 1987, every owner or operator of a used oil collection center shall post and maintain a durable and legible sign, not less than 11 inches by 15 inches in size, in a prominent location, informing the public that it is a collection site for the disposal of used oil. For the purposes of this section, "used oil collection center" means any reinspection station permitted by the Division of Motor Vehicles in the Department of Law and Public Safety, or retail service station which has a used oil collection tank on the premises, or any site which accepts used oil for recycling.

b. The Commissioner of the Department of Environmental Protection shall adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) any rules and regulations necessary to implement the provisions of this section.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 354

AN ACT concerning certain satisfaction of unpaid condominium assessments amending P.L.1948, c.67, P.L.1963, c.144 and P.L.1969, c.257.

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

1. Section 65 of P.L.1948, c.67 (C.17:9A-65) is amended to read as follows:

C.17:9A-65 Real property mortgages.

65. A. No bank shall make a mortgage loan secured by a mortgage upon real property unless

(1) (Deleted by amendment, P.L.1985, c.528.)

(2) The mortgaged property shall consist of improved real property, including farmlands, or unimproved real property, if the proceeds of such loan shall be used for the purpose of erecting improvements thereon;

(3) The mortgage securing such loan shall constitute a first lien on a fee; a mortgage shall be deemed a first lien notwithstanding the existence of a prior mortgage or mortgages held by the bank, or liens of taxes which are not delinquent, a lien of a condominium association for up to six months of customary condominium assessments pursuant to section 21 of P.L.1969, c.257 (C.46:8B-21), building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments, which the persons signing the certificate provided for in section 67 report in their opinion do not materially affect the security for the mortgage loan. Every mortgage shall be certified to be such a first lien by an attorney-at-law of the state in which the real property is located, or certified or guaranteed to be such a first lien by a corporation authorized to guarantee titles to land in such state;

(4) No such loan shall be made for a period longer than 40 years from its date, and no such loan shall exceed 80% of the appraised value of the mortgaged property; provided that there shall be included in the appraised value of the mortgaged property, for the purpose of this paragraph (4), the value of the improvements to be erected upon the mortgaged property wholly or partly with the proceeds of such loan; and

(5) The instrument evidencing the loan shall require payment to be made during each year on account of the principal amount of the loan, at a rate not less than 1% per annum of the original amount of the loan, if the original amount of the loan does not exceed 50% of the appraised value of the mortgaged property; or 2% per annum of the original amount of the loan, if the loan exceeds 50% but does not exceed 66 2/3% of such appraised value; or 4% per annum of the original amount of the loan, if the loan exceeds 66 2/3% of such appraised value; provided that, in lieu of such principal payments, the instrument evidencing any mortgage loan may require equal monthly payments, each applicable to principal and interest, in an amount sufficient to pay current interest and to repay the amount of the loan in not more than 40 years from its date; and provided further that when the proceeds of any such loan are to be used to pay, in whole or in part, the cost of constructing a building or buildings on the mortgaged property, and such proceeds are paid by the bank from time to time, final payment being made at or after completion, the instrument evidencing such loan need not require that any pay-

ment be made on account of the principal amount of the loan during the period from the date of such loan to a date not more than 18 months from the date of such loan; and such date marking the end of the period during which no payments are required to be made on account of the principal amount of the loan shall be deemed to be the date of such loan for the purpose of reckoning the 40-year period limited for the payment of such loan by this paragraph (5), and by paragraph (4) of this subsection.

B. The commissioner may, from time to time, with the concurrence of the banking advisory board, make, alter and rescind regulations: (1) Authorizing banks to make mortgage loans, or specified types or classes of mortgage loans, (a) which exceed 80% of the appraised value of the mortgaged property; (b) which mature in more than 25 years from their date; (c) which require smaller annual payments on account of the principal amounts thereof than those specified in paragraph (5) of subsection A of this section; (d) which provide for equal monthly payments, each applicable to principal and interest, in amounts sufficient to pay current interest on and to repay the amount of the loan in such number of years, more than 40 but not more than 45, as the regulations may specify; or (e) which substantially conform to the terms and conditions of mortgage loans authorized to be made by associations pursuant to the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-1 et seq.);

(2) Defining "improved real property" for the purposes of paragraph (2) of subsection A of this section;

(3) Increasing the percentage of the time deposits or the aggregate of the unimpaired capital stock and surplus of banks which banks may invest in mortgage loans beyond the limitation expressed in subsection A of section 69;

(4) Increasing the percentage of the principal balances owing on mortgage loans of the kind referred to in section 68 which shall not be included in the total of all principal balances owing on mortgage loans for the purposes of subsection A of section 69, or eliminating entirely the principal balances owing on such mortgage loans from such total of all principal balances.

C. In making, altering and rescinding regulations pursuant to subsection B of this section, the commissioner and the banking advisory board shall consider the statutes and regulations applicable to national banks in the making or acquiring of loans secured by interests in real property and the practices followed by national banks in the making or acquiring of such loans. The reg-

ulations so made shall, so far as the commissioner and the banking advisory board deem to be warranted by the state of the economy and to be consistent with sound banking practices, be directed toward the creation and maintenance of a substantial parity between banks and national banks in all matters relating to the making and acquiring of loans secured by interests in real property. The power to regulate as provided in subsection B of this section may be exercised by the commissioner and the banking advisory board within the standards established by this subsection, notwithstanding that the subject of such regulation is not expressly set forth in subsection B of this section.

D. A bank may make a mortgage loan in excess of the ratio between appraised value and the amount of the loan as established by subsection A(4) of this section, provided that the amount of such excess is secured by other collateral having a value at all times at least equal to the amount of the principal balance in excess of that amount permitted by subsection A(4) or as established by regulation of the Commissioner of Banking.

2. Section 181 of P.L.1948, c.67 (C.17:9A-181) is amended to read as follows:

C.17:9A-181 Mortgage loans.

181. A. 1. A savings bank may make or invest in mortgage loans in the manner and subject to the limitations prescribed by this section. For the purposes of this section, "mortgage loan" shall include every indebtedness secured by mortgage on real property, or on a lease of the fee of real property (in any case in which such lease is lawful security for such mortgage loan), except as otherwise provided by subsection Q. of this section, and a savings bank shall be deemed to have made a mortgage loan when

(a) It lends or participates in lending money to a borrower upon the security of real property; or

(b) It acquires, by purchase or otherwise, a mortgage loan or any share or part of or interest in a mortgage loan which is not subordinate to any share or part thereof or interest therein held by any other person.

A savings bank may sell, assign or otherwise dispose of a share or part of or interest in a mortgage loan held by it to any other person.

2. For all purposes of compliance with the applicable provisions and restrictions of subsections D. and G. of this section as to the percentage of the mortgage loan to the appraised value of the mortgaged property, and the term of and rate of amortization

of such loan, the date of the acquisition by a savings bank of a mortgage loan or a share or part thereof or interest therein shall, as respects such savings bank, be deemed to be the date as of which the mortgage loan was made and the unpaid amount of the principal then due shall be deemed to be the amount of such mortgage loan.

B. No savings bank shall make a mortgage loan at any time when the total cost of acquisition by the savings bank of all real property owned by it, other than real property held for the purposes specified in subparagraph (a) of paragraph (5) of section 24, and the total of all principal balances owing to the savings bank on mortgage loans, less all write-offs and reserves with respect to such real property and mortgage loans, together exceeds, or by the making of such loan will exceed, 80% of its deposits. For the purposes of this subsection, principal balances owing on mortgage loans made pursuant to subsection Q.(1) of this section shall, only to the extent of the unguaranteed portion of such balances, and loans made pursuant to subsection Q.(2) of this section shall, only to the extent of 50% of such balances, be included in the total of all principal balances owing to the savings bank on mortgage loans; and for the purposes of this subsection, principal balances owing on mortgage loans made by the use of funds received by the bank pursuant to the provisions of the "New Jersey Housing and Mortgage Finance Agency Law of 1983," P.L.1983, c.530 (C.55:14K-1 et seq.), shall, only to the extent of 50% of such balances, be included in the total of all principal balances, owing to the savings bank on mortgage loans.

C. In the event that the real property offered as security for a mortgage loan is subject to one or more prior mortgage liens, the maximum amount of a mortgage loan which may be made pursuant to this section shall be reduced by the total amount of the mortgage loan or loans outstanding which are secured by the prior mortgage lien or liens, except that, if any prior mortgage lien or liens secure a line, or lines, of credit, the maximum amount of mortgage loan which may be made pursuant to this section shall be reduced by the total amount that may be borrowed under the line, or lines, of credit.

D. When the real property offered as security for a mortgage loan consists of a lot of land, or, in the case of condominiums, an interest in a lot of land, upon which there is one or more one-, two-, three-, or four-family dwellings including appropriate garages or other outbuildings, if any, or upon which such dwelling or dwellings, garages or outbuildings are in the course of construction or are to be constructed, the amount of the mortgage

loan shall not exceed 90% of the appraised value of the real property; provided, however, where mortgage guaranty insurance is issued incident to such loan pursuant to the provisions of the Mortgage Guaranty Insurance Act, P.L.1968, c.248 (C.17:46A-1 et seq.), the amount of the mortgage loan shall not exceed 95% of the appraised value of the real property.

E. (Deleted by amendment.)

F. (Deleted by amendment.)

G. When the real property offered as security for a mortgage loan consists of a lot of land upon which there is a building or buildings other than dwellings of the nature described in subsection D. of this section, or upon which such other buildings are in the course of construction, or are to be constructed, or when such land is paved for parking lot purposes, the amount of the mortgage loan shall not exceed 80% of appraised value of such real property. The instrument evidencing a mortgage loan made pursuant to this subsection shall require that the loan be repaid in full in not more than 30 years and one month from the date it is made; and (a) if the amount of such loan, when made, exceeds 50%, of the appraised value of the real property, that payment shall be made in reduction thereof at least semiannually, at an annual rate equal to at least 1% of the original amount of such loan; or (b) if the amount of such loan, when made, does not exceed 50% of the appraised value of the real property, that payments shall be made in reduction thereof at least semiannually, at an annual rate equal to at least 1/2% of the original amount of such loan; provided, that, in lieu of such principal payments, the instrument evidencing any mortgage loan may require equal monthly payments each applicable to principal and interest in an amount sufficient to pay current interest and to repay the amount of the loan in not more than 30 years and one month from its date. When, however, the amount of such loan does not, when made, exceed 50% of the appraised value of such real property, and the instrument evidencing such loan requires that it be paid in full in not more than five years and one month from the date it is made, the instrument need not require that any payment be made in reduction of such loan prior to its maturity date. Notwithstanding the limitations prescribed by subsection D. and hereinabove in this section, a savings bank may make a mortgage loan secured by a lot of land or two or more lots of land, contiguous or not, upon each of which there is a building or buildings, or upon each of which a building or buildings are in the course of construction or are to be

constructed. The limitations of this section governing the term of the loan, rate of amortization, and the percentage of the mortgage loan to the appraised value of each type of building, including land, shall apply. No loans shall be made under subsection D. or G. hereof to any one person or on any one property if the loans shall exceed 15% of the surplus, undivided profits, and reserves of the savings bank, or $50,000.00, whichever is greater.

H. When the real property offered as security for a mortgage loan is of the nature described in subsection D. of this section, and the amount of the loan does not exceed 66 2/3% of the appraised value of such real property, the instrument evidencing such loan shall be sufficient if it conforms to the requirements of subsection G. of this section.

I. A mortgage loan may be made for the purpose of enabling a borrower to construct a building or buildings upon real property owned by him, and, in such a case, the appraised value of the real property shall include the value of the building or buildings to be constructed, but at no time shall a greater sum be advanced on account of such loan than, in the opinion of (1) the appraisers hereinafter provided for, or (2) one of such appraisers and an officer of the savings bank designated for that purpose by the board of managers, is warranted by the state of completion of the buildings in process of construction. For the purposes of compliance with the applicable requirements of subsection G. of this section as to the term of and the rate of amortization of a loan made pursuant to this section, such loan shall be deemed to have been made when the final advance shall be made to the borrower on such loan, or 60 months from the date of the mortgage securing such loan, whichever is earlier.

J. When the real property offered as security for a mortgage loan consists of unimproved land, and the proceeds of the mortgage loan are not to be used to construct a building on the land, the amount of the loan shall not exceed 50% of the appraised value of the real property. When the real property offered as security for a mortgage loan consists of unimproved land, and the proceeds of the loan are to be used for improvements to the land, the amount of such loan shall not exceed 75% of the appraised value of such real property. The instrument evidencing a loan made pursuant to this subsection shall require that such loan be paid in full in not more than 10 years and one month from the date it is made. No loan made pursuant to this subsection shall exceed $10,000.00, or 3/10 of 1% of the deposits of the savings bank, whichever is greater; nor shall any loan be made at any time when the total of all such loans

exceeds, or if the making of such loan would cause such total to exceed 2% of the deposits of the savings bank.

K. No mortgage loan shall be made except upon a written certification signed by at least two persons, each of whom shall be either a manager of the bank or an appraiser appointed by its board of managers. In the case of a mortgage loan secured by a mortgage upon real property, such certification shall state the opinion of such persons as to the value of the land and the improvements thereon or to be erected thereon and the character of such improvements. In the case of a mortgage loan secured by a mortgage upon a lease of the fee of real property, such certification shall state the opinion of such person as to the value of the leasehold interest to be subject to the mortgage, including the leasehold interest in the improvements erected or to be erected upon the leased property and the character of such improvements. Such certification shall be filed with the records of the bank, and shall be preserved until the savings bank has no interest, as mortgagee or otherwise, in the real property.

L. Purchase money mortgage loans made by a savings bank on the sale of real property owned by it shall not be subject to the preceding subsections or to subsection P. of this section, except that such loans shall be included in determining whether the total amount of mortgage loans held by a savings bank exceeds 80% of its deposits.

M. No savings bank shall make a mortgage loan secured by a mortgage upon a lease of the fee of real property unless

(1) The leased property is located within this State or, if outside this State, the leased property is located within 50 miles of the border of this State;

(2) The leased property shall consist of improved real property, including farmlands, or unimproved real property if the proceeds of such loan shall be used for the purpose of erecting improvements thereon;

(3) The mortgage securing such loan shall constitute a first lien on a lease of the fee of real property, which fee is not subject to any prior lien; the fee shall be deemed not subject to any prior lien notwithstanding the existence of liens of taxes which are not delinquent, a lien of a condominium association for up to six months of customary condominium assessments pursuant to section 21 of P.L.1969, c.257 (C.46:8B-21), building restrictions or other restrictive covenants or conditions, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments, which the persons signing the certificate provided

for in subsection K. of this section report in their opinion do not materially affect the security for the mortgage loan. Every mortgage shall be certified to be such a first lien by an attorney-at-law of the state in which the real property is located, or certified or guaranteed to be such a first lien by a corporation authorized to guarantee titles to land in such state;

(4) Such loan shall not exceed 66 2/3% of the appraised value of the leasehold interest subject to the mortgage, including the leasehold interest in the improvements erected upon the mortgaged property, or to be erected thereon wholly or partly with the proceeds of the mortgage loan; and

(5) The instrument evidencing the loan shall require that payment be made on account of the principal amount of such loan at an annual rate sufficient to repay such loan not later than one year prior to the expiration of the lease;

(6) Notwithstanding the foregoing, the terms of the loan are authorized for an association pursuant to subsections C. and D. of section 155 of the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-155).

N. The instrument evidencing a mortgage loan may be in such form, and may contain such provisions, not inconsistent with law, as the savings bank may choose to insert for the protection of its lien and the preservation of its interest in the real property mortgaged to it.

O. Notwithstanding the limitations prescribed by the preceding subsections or by subsection P. of this section, a savings bank may

(1) For the purposes of preventing or mitigating loss, or of preserving the lien of its mortgage, or of conserving the value of the real property affected by its mortgage, (a) extend the time for the payment of principal or interest, (b) modify or waive any of the terms or conditions of the instrument evidencing a mortgage loan, (c) settle or compromise all or part of the amount due or to grow due on a mortgage loan, (d) sell or assign the mortgage loan, or a share or part thereof or interest therein, for such consideration as it shall deem proper, and (e) advance funds for the payment of any tax, lien, charge or claim whatsoever; and

(2) Make a loan in addition to an existing mortgage loan or loans held by it, upon the security of the same real property and secured by the existing mortgage or mortgages, in an amount not to exceed the difference between the balance due on the existing mortgage or mortgages and the original amount thereof; provided, however, that no such additional loan shall be made which shall increase the total amount due upon such mortgages over the amount which could be loaned upon the security of such real

property. Such additional loan shall be repaid in equal monthly installments, beginning within one year from the date of such loan, with the payments adjusted so that the additional loan shall be repaid in full either before or at the maturity of the existing mortgage. If the unexpired term of such mortgage or mortgages shall have been reduced to 15 years or less, such term may be extended for an additional period of not more than 15 years. Adjustment of payments and extension of mortgage terms pursuant to this section shall comply with the provisions of subsection G. or H. of this section. If so provided in the original mortgage or a supplement or amendment thereto, persons who acquire any rights in or liens upon the mortgaged real property subsequent to the recording of the original mortgage or such supplement or amendment, as the case may be, shall hold such rights and liens subject to the prior lien of the original mortgage and such supplement or amendment, if any, as security for such additional loan; and in such case, no title certificate or insurance under subsection C. of this section shall be required with respect to such additional loan.

P. Except as otherwise provided by this section, no savings bank shall make a mortgage loan if the making of such loan would cause the total of all unpaid balances of such loans held by the savings bank upon the security of the same real property or leasehold, to exceed the limitations imposed by this section upon the amount of a mortgage loan which may be made upon the security of such real property or such leasehold.

Q. A savings bank may invest in

(1) (a) Veterans' loans, wherever located, made pursuant to Title III of the Act of Congress of June 22, 1944, known as the "Servicemen's Readjustment Act of 1944," as amended, supplemented, revised, or recodified from time to time, which the Administrator of Veterans' Affairs or other officer or agency which succeeds to his powers and functions under said act has insured or guaranteed or has made a commitment to insure or guarantee, to the extent and in the manner provided in said act or the regulations made thereunder; and

(b) Veterans' loans, wherever located, made and insured or guaranteed in part as provided in paragraph (1)(a) of this subsection of this section, and, as to the balance thereof, insured or guaranteed by an insurer or guarantor named or described in paragraph (2) of this subsection of this section.

(c) Mortgages or deeds of trust or other securities made pursuant to paragraph (1)(a) of this subsection of this section shall not

be subject to the provisions and restrictions of this section, except that they shall be included in determining whether total mortgage investments are within the limitation prescribed by subsection B. of this section, provided, however, that said mortgages or deeds of trust or other securities shall not be subject to the provisions of any law of this State prescribing or limiting the interest which may be taken upon such loans or investments.

(2) (a) Mortgages or deeds of trust or other securities of the character of mortgages which are first liens on the fee of real property or a lease of the fee of real property, wherever located, which (i) the United States, or (ii) the Federal Housing Commissioner under the Act of Congress of June 27, 1934, known as the "National Housing Act," 48 Stat. 1246 (12 U.S.C. § 1701 et seq.) as amended, supplemented, revised or recodified from time to time, or other officer or agency which succeeds to his powers and functions, or (iii) the State of New Jersey or an officer or agency thereof, or (iv) any other officer or agency of the United States or of this State which the commissioner shall have approved for the purposes of this section as an insurer or guarantor, has fully insured or guaranteed or made a commitment to fully insure or guarantee.

(b) Mortgages or deeds of trust or other securities made pursuant to paragraph (2)(a) of this subsection of this section shall not be subject to the provisions and restrictions of this section, except that they shall be included in determining whether total mortgage investments are within the limitation prescribed by subsection B. of this section, provided, however, that said mortgages or deeds of trust or other securities shall not be subject to the provisions of any law of this State prescribing or limiting the interest which may be taken upon such loans or investments.

R. The commissioner may, from time to time, make, alter and rescind regulations:

(1) Authorizing savings banks to make mortgage loans or specified types or classes of mortgage loans (a) which exceed the specified percentages of the appraised value of the mortgaged property; (b) which mature later than the specified periods from their date; (c) which require smaller annual payments on account of the principal amounts thereof than those specified in this section; (d) which provide for equal monthly payments each applicable to principal and interest in amounts sufficient to pay current interest on and to repay the amount of the loan in such number of years more than 40, but not more than 45, as the regulation may specify; or (e) which substantially conform to the terms and conditions of mortgage loans authorized to be made by

associations pursuant to the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-1 et seq.);

(2) Increasing the percentage of deposits of savings banks which savings banks may invest in mortgage loans;

(3) Increasing the percentage of principal balances owing on mortgage loans referred to in subsection Q. which shall not be included in the total of all principal balances owing on mortgage loans for the purpose of subsection B.; or

(4) Eliminating entirely the principal balances owing on such mortgage loans from such total of all principal balances.

S. Notwithstanding the provisions of this section, a savings bank may make a mortgage loan in excess of the ratio between appraised value and the amount of the loan as such ratio is established herein, provided that such excess is secured by other collateral having a value at all times at least equal to the amount of the principal balance in excess of the amount permitted by subsection G., H., J., or M., of this section or as established by regulation of the Commissioner of Banking.

3. Section 11 of P.L.1963, c.144 (C.17:12B-11) is amended to read as follows:

C.17:12B-11 Mortgage deemed first lien.

11. A mortgage upon real property or a mortgage upon a lease of the fee of real property shall be deemed a first lien as follows:

(a) A mortgage upon real property shall be deemed a first lien notwithstanding the existence of a prior mortgage or mortgages held by the association, or liens of taxes or assessments which are not delinquent, a lien of a condominium association for up to six months of customary condominium assessments pursuant to section 21 of P.L.1969, c.257 (C.46:8B-21), building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments which do not materially affect the security for the mortgage loan.

(b) A mortgage upon a lease of the fee of real property shall be deemed a first lien notwithstanding the existence of liens of taxes or assessments which are not delinquent, building restrictions or other restrictive covenants or conditions, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments which do not materially affect the security for the mortgage loan.

(c) A mortgage upon an apartment which is part of a horizontal property regime, established under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.) or upon a unit which is part of a condominium established pursuant to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.) shall be deemed a first lien notwithstanding the existence of other proportionate undivided interests in the "general common elements" or "common elements" of such horizontal property regime or condominium, as the case may be, as the same are defined in the "Horizontal Property Act," and the "Condominium Act," respectively, and notwithstanding the indivisibility of such common elements or the existence of a prior mortgage or mortgages held by the association upon such apartment or unit or the existence of a prior mortgage or mortgages on other apartments or units within the particular horizontal property regime or condominium, as the case may be, regardless of whether such prior mortgages are held by the association or any other mortgagee and notwithstanding liens of taxes or assessments which are not delinquent, building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, or other easements or encroachments which do not materially affect the security for the mortgage loan.

(d) Every mortgage shall be certified to be a first lien by an attorney at law of the state in which the real property is located, or certified or guaranteed to be a first lien by a corporation authorized to guarantee titles to real property in such state.

4. Section 21 of P.L.1969, c.257 (C.46:8B-21) is amended to read as follows:

C.46:8B-21 Liens in favor of association; priority.

21. a. The association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, together with interest thereon and, if authorized by the master deed or bylaws, reasonable attorney's fees. Such lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making pay-

ment shall be entitled to a recordable satisfaction of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, other than liens for unpaid property taxes or federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary condominium assessments as defined herein, the amount of which shall not exceed the aggregate customary condominium assessment against the unit owner for the six-month period prior to the recording of the lien;

(2) With respect to a particular mortgage, to a lien recorded prior to:

(a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or

(b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority shall not be greater than the assessment for the six-month period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

(4) The priority granted to a lien pursuant to this subsection shall expire on the first day of the 60th month following the date of recording of an association's lien.

(5) A lien of an association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the association for unpaid assessments has obtained priority over the same recorded mortgage or mortgages as provided in this subsection, for a period of 60 months from the date of recording of the lien granted priority.

(6) When recording a lien which may be granted priority pursuant to this act, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

For the purpose of this section, a "customary condominium assessment" shall mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association as a first mortgage.

c. Upon any voluntary conveyance of a unit, the grantor and grantee of such unit shall be jointly and severally liable for all unpaid assessments pertaining to such unit duly made by the association or accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while he is the unit owner.

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due prior to acquisition of title as a result of the foreclosure. Such unpaid share of common expenses and other assessments shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall

have the power, unless prohibited by the master deed or bylaws to bid in the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same.

5. Section 22 of P.L.1969, c.257 (C.46:8B-22) is amended to read as follows:

C.46:8B-22 Effect of sheriff's sale.

22. Effect of sheriff's sale. (a) A unit may be sold by the sheriff on execution, free of any claim, not a lien of record, for common expenses or other assessments by the association, but any funds derived from such sale remaining after satisfaction of prior liens and charges but before distribution to the previous unit owner, shall be applied to payment of such unpaid common expenses or other assessments if written notice thereof shall have been given to the sheriff before distribution. Any such unpaid common expenses which shall remain uncollectible from the former unit owner for a period of more than 60 days after such sheriff's sale may be reassessed by the association as common expenses to be collected from all unit owners including the purchaser who acquired title at the sheriff's sale, his successors and assigns. Unless prohibited by the master deed or bylaws, the association may bid in and purchase the unit at a sheriff's sale, and acquire, hold, lease, mortgage and convey the same.

(b) Notwithstanding any foreclosure, tax sale, or other forced sale of a unit, all applicable provisions of the master deed and bylaws, shall be binding upon any purchaser at such sale to the same extent as they would bind a voluntary grantee except that such purchaser shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former owner which became due prior to such sale except as otherwise provided in subsection (a) of this section or section 21 of P.L.1969, c.257 (C.46:8B-21).

6. This act shall take effect on the first day of the third month next following enactment, and shall not apply to or affect liens perfected prior to the effective date.

Approved January 5, 1996.

CHAPTER 355

AN ACT concerning criminal penalties for violations of the animal cruelty 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. R.S.4:22-12 is amended to read as follows:

Use of badge by nonmember; petty disorderly persons offense.

4:22-12. A person not a member of a duly organized or incorporated society for the prevention of cruelty to animals, who shall use the badge adopted by such society, which badge is made authority for making arrests, shall be guilty of a petty disorderly persons offense.

2. R.S.4:22-17 is amended to read as follows:

Cruelty; disorderly persons offense.

4:22-17. A person who shall:

a. Overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat or otherwise abuse, or needlessly mutilate or kill, a living animal or creature;

b. Cause or procure any of such acts to be done; or

c. Inflict unnecessary cruelty upon a living animal or creature of which he has charge either as owner or otherwise, or unnecessarily fail to provide it with proper food, drink, shelter or protection from the weather--

Shall be guilty of a disorderly persons offense.

3. 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.

4. R.S.4:22-21 is amended to read as follows:

Offering for sale horse unfit for work; disorderly persons offense.

4:22-21. A person who shall receive or offer for sale a horse which by reason of disability, disease or lameness, or for any other cause, could not be worked without violating the provisions

of this article or any law of this State relating to cruelty to animals shall be guilty of a disorderly persons offense.

5. R.S.4:22-22 is amended to read as follows:

Offering diseased animal for sale; crime of fourth degree.

4:22-22. A person who shall:

a. Willfully sell, or offer to sell, use, expose, or cause or permit to be sold or offered for sale, used or exposed, any 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

b. When any such disease is beyond recovery, refuse upon demand to deprive any such animal of life--

Shall be guilty of a crime of the fourth degree.

6. R.S.4:22-23 is amended to read as follows:

Use of bird as target; disorderly persons offense, $25 fine.

4:22-23. A person who shall:

a. Use a live pigeon, fowl or other bird for the purpose of a target, or to be shot at either for amusement or as a test of skill in marksmanship;

b. Shoot at a bird used as aforesaid or is a party to such shooting; or

c. Lease a building, room, field or premises, or knowingly permit the use thereof for the purpose of such shooting--

Shall be guilty of a disorderly persons offense, and shall, in addition to any penalty assessed therefor, be fined $25 for each bird shot at or killed in violation of this section. This section shall not apply to the shooting of game.

7. Section 2 of P.L.1939, c.315 (C.4:22-25.2) is amended to read as follows:

Violations; petty disorderly persons offense.

2. Any person who shall violate any of the provisions of section 1 of P.L.1939, c.315 (C.4:22-25.1) shall be guilty of a petty disorderly persons offense.

8. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 356

AN ACT concerning consolidated services, interlocal and joint agreements between local units and amending various sections of statutory law.

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

1. Section 3 of P.L.1973, c.208 (C.40:8A-3) is amended to read as follows:

C.40:8A-3 Authority to enter into contract for joint provision of services.

3. Any local unit of this State may enter into a contract with any other local unit or units for the joint provision within their several jurisdictions of any service which any party to the agreement is empowered to render within its own jurisdiction. An autonomous authority, board, commission or district established by and within a single local unit and providing service within such local unit or a part thereof may become a party to such contract with the consent of the governing body of the local unit, by resolution thereof adopted in the manner provided in section 4 of this act; and after such consent duly given, such authority, board, commission or district may enter into such contract by resolution without need of publication or hearing.

2. Section 4 of P.L.1973, c.208 (C.40:8A-4) is amended to read as follows:

C.40:8A-4 Adoption of resolution; filing of contract.

4. A party authorized to enter into a contract under section 3 of this act may do so by the adoption of a resolution. A resolution adopted pursuant to this section or section 3 need not set forth the terms of the contract in full, but shall clearly identify it by reference; and a copy of the contract shall be filed and open to public inspection at the offices of the local unit immediately after the introduction of any such resolution before the governing body. The contract shall take effect upon the adoption of appropriate resolutions by all the parties thereto as set forth in the contract document.

3. Section 1 of P.L.1967, c.180 (C.40:48B-14) is amended to read as follows:

C.40:48B-14 Office of joint municipal tax assessor; establishment.

1. The governing bodies of any two or more municipalities may, by substantially similar resolutions duly adopted by each of such governing bodies within six calendar months after the first such resolution is adopted, establish and maintain the office of joint municipal tax assessor to assess real and personal property for taxation within each of the respective municipalities joining hereunder.

4. Section 2 of P.L.1967, c.180 (C.40:48B-15) is amended to read as follows:

C.40:48B-15 Appointment of joint municipal tax assessor, personnel; apportionment of operating costs.

2. The governing bodies of the participating municipalities shall, by agreement, provide for the appointment of a joint municipal tax assessor and other necessary personnel, for the apportionment of the costs and expenses of operation of such office among the participating municipalities, for the addition of other municipalities in the same county and such other terms and conditions as may be necessary and convenient for the establishment and maintenance of the office. The apportionment of costs and expenses may be based upon "apportionment valuations" determined under Revised Statutes 54:4-49, number of taxable properties, population, budgets, and such other factor or factors, or any combination thereof, as may be provided in the agreement. The agreement shall be subject to approval by resolution of the governing bodies of each of the municipalities prior to its execution by such official or officials as may be authorized to execute such agreement. A copy of every pertinent resolution, agreement and every amendment thereto shall be filed with the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Local Finance in the Department of Community Affairs.

5. Section 1 of P.L.1983, c.372 (C.40A:10-36) is amended to read as follows:

C.40A:10-36 Joint insurance fund; definitions.

1. a. The governing body of any local unit, including any contracting unit as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), may by resolution agree to join together with any other local unit or units to establish a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation as provided in Articles 3 and 4 of chapter 10 of Title 40A of the New Jersey Statutes, and providing contributory

or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents or both, through self insurance, the purchase of commercial insurance or reinsurance, or any combination thereof, and may appropriate such moneys as are required therefor. The maximum risk to be retained for group term life insurance by a joint insurance fund on a self-insured basis shall not exceed a face amount of $5,000 per covered employee or dependent or more if approved by the Commissioners of Insurance and Community Affairs. As used in this subsection: (1) "life insurance" means life insurance as defined pursuant to N.J.S.17B:17-3; (2) "health insurance" means health insurance as defined pursuant to N.J.S.17B:17-4 or service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State; and (3) "dependent" means dependent as defined pursuant to N.J.S.40A:10-16.

b. The governing body of any local unit, including any contracting unit as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), may by resolution agree to join together with any other local unit or units to establish a joint insurance fund for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverages approved by the Commissioner of Insurance.

6. Section 2 of P.L.1992, c.51 (C.40A:10-53) is amended to read as follows:

C.40A:10-53 Joint insurance for municipality, all purpose regional, consolidated school district.

2. In the case of an all purpose regional school district or a consolidated school district, the governing body of one or more of the constituent municipalities and the board of education of the regional or consolidated school district may by resolution adopted by a majority of the full membership of the governing body of each of the participating constituent municipalities and a majority of the full membership of the board, agree to join together for the purpose of insuring pursuant to the provisions of: a. Article 1 of chapter 10 of Title 40A of the New Jersey Statutes (N.J.S.40A:10-1 et seq.); b. Article 3 of chapter 10 of Title 40A of the New Jersey Statutes (N.J.S.40A:10-6 et seq.); c. Article 4 of chapter 10 of Title 40A of the New Jersey Statutes (N.J.S.40A:10-12 et seq.); or d. P.L.1983, c.372 (C.40A:10-36 et seq.).

Notwithstanding the provisions of this section, a board of education shall not join together with a municipality or other local unit as provided in section 1 of P.L.1983, c.372 (C.40A:10-36) for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents or both, as otherwise permitted therein.

7. Section 10 of P.L.1971, c.198 (C.40A:11-10) is amended to read as follows:

C.40A:11-10 Joint agreements for purchase of work, materials, supplies; cooperative marketing; authorization.

10. (a) (1) The governing bodies of two or more contracting units within the same county, or adjoining counties, may provide by joint agreement for the purchase of work, materials and supplies for use by their respective jurisdictions.

(2) The governing bodies of two or more contracting units providing sewerage services pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint agreement for the purchase of work related to sewage sludge disposal.

(3) The governing body of two or more contracting units providing electrical distribution services pursuant to and in accord with R.S.40:62-12 through R.S.40:62-25, may provide by joint agreement for the purchase of work, material and supplies related to the distribution of electricity.

(4) The governing bodies of two or more contracting units may provide for the cooperative marketing of recyclable materials recovered through a recycling program.

(b) The governing body of any county or municipality may provide by joint agreement with the board of education of any school district located wholly or partially within the geographic boundaries of the county or municipality for the purchase of work, materials and supplies for use by their respective jurisdictions.

(c) Such agreement shall be entered into by resolution adopted by each of the participating bodies and boards, which shall set forth the categories of work, materials and supplies to be purchased, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating body and board, and other matters deemed necessary to carry out the purposes of the agreement.

(d) Each participating body's and board's share of expenditures for purchases under any such agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the participating body and board.

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

C.40A:11-11 Additional matters regarding agreements for the purchases of work, materials and supplies.

11. (1) The contracting units entering into a joint agreement pursuant to section 10 of this act may designate a joint purchasing agent, department or board pursuant to section 9 of this act. Any such agent, board or department already designated pursuant to section 9 may serve as the joint agent, department or board designated pursuant to this section.

(2) Purchases, contracts or agreements made pursuant to a joint purchasing agreement shall be subject to all of the terms and conditions of this act.

(3) Any county or municipality serving as a purchasing agent, board or department pursuant to this section 11, may make an appropriation to enable it to perform any such contract and may anticipate as revenue payments to be made and received by it from any other party to the agreement. Any items so included in a local budget shall be subject to the approval of the Director, Division of Local Government Services, who shall consider the matter in conjunction with the requirements of chapter 4 of Title 40A of the New Jersey Statutes. The agreement and any subsequent amendment or revisions thereto shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs.

(4) Any agent, department or board so designated pursuant to a joint purchasing agreement shall have the sole responsibility to comply with the provisions of section 23 of this act.

(5) The governing bodies of two or more contracting units or boards of education within the same county, or adjoining counties; or for purposes related to the distribution of electricity, the governing bodies of two or more contracting units providing electrical distribution services pursuant to R.S.40:62-12 through R.S.40:62-25, may by resolution establish a cooperative pricing system as hereinafter provided. Any such resolution shall establish procedures whereby one participating contracting unit in the cooperative pricing system shall be empowered to advertise and receive bids to provide prices for all other participating contract-

ing units in such system for the purchase of work, materials and supplies; provided, however, that no purchase or contract shall be made by any participating contracting unit for a price which exceeds any other price available to the participating contracting unit, or for a purchase in deviation from the specifications, price or quality set forth by the participating contracting unit.

No vendor shall be required or permitted to extend his bid prices to participating contracting units in a cooperative pricing system unless so specified in the bids.

No cooperative pricing system and agreements entered into pursuant to such system, or joint purchase agreements established pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) or any other provision of law, shall become effective without prior approval of the Director of the Division of Local Government Services and said approval shall be valid for a period not to exceed five years.

The director's approval shall be based on the following:

(a) Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration, and

(b) Adequacy of public disclosure of such actions as are taken by the participants, and

(c) Adequacy of procedures to facilitate compliance with all provisions of the "Local Public Contracts Law" and corresponding regulations, and

(d) Clarity of provisions to assure that the responsibilities of the respective parties are understood.

Failure of the Director of the Division of Local Government Services to approve or disapprove a properly executed and completed application to establish a cooperative pricing system and agreements entered into pursuant to such system or other joint purchase agreement within 45 days from the date of receipt of said application by the director shall constitute approval of said application, which shall be valid for a period of five years, commencing from the date of receipt of said application by the director.

The Director of the Division of Local Government Services is hereby authorized to promulgate rules and regulations specifying procedures pertaining to cooperative pricing systems and joint purchase agreements entered into pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) and any other provision of law.

9. This act shall take effect immediately and shall be applicable to contracts and agreements entered into after the effective date of this act.

Approved January 5, 1996.

CHAPTER 357

AN ACT concerning paid health benefits for certain retired board of education employees 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.52:14-17.32f2 Applicability of C.52:14-17.32f; coverage.

1. The provisions of section 3 of P.L.1987, c.384 (C.52:14-17.32f) shall apply to any employee of a board of education who is a member of a pension fund created prior to the effective date of this act under the provisions of article 2 of chapter 66 of Title 18A of the New Jersey Statutes (N.J.S.18A:66-94 et seq.) and who retires on a benefit based upon 25 or more years of service credit in the pension fund, or retires on a disability pension based upon fewer years of service credit in that pension fund, or elected deferred retirement based upon 25 or more years of service credit and receives a retirement allowance from that pension fund, except that 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.

An employee who retired prior to the effective date of this act is eligible for the coverage if the employee applies to the program for it within one year after the effective date.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 358

AN ACT concerning the payment of host community benefits to certain municipalities and supplementing chapter 14A of Title 40 of the Revised Statutes.

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

C.40:14A-31.1 Eligibility for annual host municipality benefit; calculation.

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, a municipality with a population greater than 6,150 persons but less than 6,600 persons, according to the latest federal decennial census, located in a county of the fifth class with a population exceeding 500,000 persons, according to the latest federal decennial census, and in which is located a wastewater treatment facility, sludge dewatering facility and sludge incineration facility, owned or operated by a regional sewerage authority pursuant to the provisions of P.L.1946, c.138 (C.40:14A-1 et seq.), and which facilities serve more than one municipality, shall be entitled to an annual host municipality benefit in an amount determined by multiplying $0.06 times each 1,000 gallons of sewerage processed at the wastewater treatment plant per year that was generated by the municipality which hosts the facilities, according to the calculations as prepared by the consulting engineer to the regional sewerage authority. The total amount of each year's benefit shall be rounded to the nearest $1.00.

C.40:14A-31.2 Payment of benefit.

2. a. An authority subject to the provisions of this act shall annually pay the appropriate municipality the full amount of the benefit provided for in this act, and a recipient municipality may anticipate this amount for the purposes of preparing its annual budget. All cash payments shall be appropriated by the municipality in accordance with the provisions of the "Local Budget Law," N.J.S.40A:4-1 et seq. The authority responsible for paying the benefit specified under this act may, subject to the prior agreement of the recipient municipality, provide such benefit to the municipality in the following manner:

(1) Notwithstanding the provisions of section 31 of P.L.1946, c.138 (C.40:14A-31), as payment in lieu of taxes on the land on which the wastewater treatment plant, dewatering plant and sludge incineration facility are situated, and such payment shall

be due and owing at the same time as the third quarterly payment of property taxes is due and owing pursuant to R.S.54:4-66;

(2) As an exemption of all or part of the fees and charges for the treatment of all wastewater generated within the boundaries of the municipality;

(3) As a lump sum cash payment or payments, according to a schedule established by the governing body of the recipient municipality; or

(4) Any combination thereof.

b. The payment of a host community benefit under this section shall be included as a cost of operation and maintenance for which rents, rates, fees or other charges are collected by the authority pursuant to section 8 of P.L.1946, c.138 (C.40:14A-8).

C.40:14A-31.3 Benefit constitutes personal obligation of authority.

3. The host municipality benefit provided for under this act shall constitute a personal obligation of the appropriate authority, and shall be enforced through civil action pursuant to the New Jersey Court Rules.

4. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 359

AN ACT establishing the Rental Housing Incentive Guarantee Program, providing for loan guarantees for developers of affordable rental housing under certain circumstances, supplementing and amending P.L.1983, c.530, and amending P.L.1974, c.80 and P.L.1992, c.16.

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

C.55:14K-64 Short title.

1. This act shall be known and may be cited as the "Rental Housing Incentive Guarantee Program."

C.55:14K-65 Findings, declarations relative to Rental Housing Incentive Guarantee Program.

2. The Legislature hereby finds and declares:

a. The present depressed condition of the housing industry in this State is both an obstacle to economic recovery and a source of distress to those among our population for whom housing at affordable cost has become inadequate, insufficient or unavailable.

b. By enactment of P.L.1992, c.114 (C.55:14K-45 et seq.) this Legislature recognized the severity of this problem and endeavored to provide a stimulus to the housing industry through a program of loans and loan guarantees for housing development, to be administered by the New Jersey Housing and Mortgage Finance Agency (HMFA.).

c. The aforesaid enactment, however, is limited to the encouragement of housing that is to be developed for sale to individual home owners; whereas for the foreseeable future the most pressing need for housing will be among those lower-income groups for whom home ownership remains out of reach, and to whom it is essential that affordable rental housing of a decent standard of habitability be made available.

d. The Assembly Task Force on HMFA Operations, which issued its general recommendations on January 27, 1993, recommended that additional resources be allocated towards significantly increasing rental housing production.

e. The Assembly Housing Committee, in both the 1992-1993 and 1994-1995 legislative sessions, has provided forums on numerous occasions to the banking industry, HMFA, and builders of rental housing, which enabled these parties to formulate a plan to remove the barriers to the construction of affordable rental housing.

f. It is, therefore, the intention of this act to make available, under administration of the HMFA, loan guarantees to developers of rental housing upon terms that include assurances of long-term affordability to low and moderate income renters of a significant proportion of the dwelling units thus developed.

g. It is the further intention of this act to suggest that a portion of the funding provided to the New Jersey Economic Development Authority (NJEDA) under the "Economic Recovery Act," P.L.1992, c.16 (C.34:1B-7.10 et al.), be directed to the development of affordable rental housing.

C.55:14K-66 Definitions.

3. As used in this act:

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Construction costs" means all expenditures made or incurred by a qualified housing developer, inclusive of reasonable pre-con-

struction costs, prior to the obtaining of permanent financing on a completed housing development.

"Construction loan" means a loan made to a qualified developer for the financing of construction costs.

"Development" means development within the meaning of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Fund" means the Rental Housing Incentive Guarantee Fund established pursuant to section 4 of this act.

"Housing developer" means any person, firm, corporation or association of persons that has undertaken or proposes to undertake a housing development.

"Housing development" means development undertaken for the purpose of creating one or more residential units, whether detached or attached or in the form of multiple dwellings, for occupancy under rental tenure by persons who shall occupy such units as their usual and permanent residence, together with any structures or facilities appurtenant or ancillary thereto.

"Institutional lender" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an office in this State, or any insurance company or any mortgage banking firm or mortgage banking corporation authorized to transact business in this State.

"Loan guarantee" means an agreement by the agency to guarantee up to 30 percent of the remaining principal balance of a loan made to a qualified developer by an institutional lender, either through agreements to purchase loans or to otherwise indemnify the lender, up to an amount not to exceed $300,000.

"Permanent financing" means long-term financing secured by a qualified housing developer through an institutional lender, and may include construction costs and costs associated with developing, constructing, and managing a housing development.

"Pre-construction costs" means the amount approved by the agency as an appropriate expenditure that may be incurred prior to the obtaining of permanent financing on a completed housing development, exclusive of the actual costs of construction and preparatory and ancillary to actual construction, and may include, without limitation: (1) payments for options, deposits or contracts to purchase properties on the proposed housing development site; (2) legal and organizational expenses, including attorneys' fees, and salaries, office rent and other incidental expenses for a project manager and office staff; (3) fees for preliminary feasibil-

ity studies, planning advances, borings, surveys, engineering and architectural work, and fees for the services of architects, engineers, planners and attorneys in connection therewith; (4) expenses for tenant surveys and market analyses; and (5) such other expenses as the agency may deem necessary and appropriate to effectuate the purposes of this act.

"Qualified housing developer" means a housing developer who has qualified for a loan guarantee pursuant to section 5 of this act.

"Qualified housing development" means a housing development for which a loan guarantee may be made pursuant to section 5 of this act.

C.55:14K-67 Rental Housing Incentive Guarantee Fund established.

4. a. There is hereby established in the agency the Rental Housing Incentive Guarantee Fund, which shall be non-revolving, for the purpose of funding loan guarantees authorized pursuant to this act.

b. There shall be paid into the fund: (1) moneys allocated to the agency under agreements made with the New Jersey Economic Development Authority pursuant to section 9 of this act and (2) any other funds that may be made available to the fund by the agency, such as funds available from bond redemptions or refundings, federal funds, available reserves, moneys available from the Revolving Housing Development and Demonstration Grant Program fund established pursuant to section 5 of P.L.1967, c.82 (C.52:27D-63), or any moneys available from any other program the purpose of which is to promote affordable housing, up to an amount not to exceed $10,000,000, which shall be based on lender participation and program demands.

c. Moneys in the fund shall be used exclusively for (1) making payments in fulfillment of the terms of loan guarantees entered into pursuant to section 5 of this act; and (2) defraying the administrative costs of the agency in carrying out the purposes and provisions of this act.

C.55:14K-68 Powers, duties of agency.

5. a. The agency is hereby authorized to contract with institutional lenders to guarantee on behalf of a qualified housing developer the repayment of up to 30 percent of the full principal balance of a loan outstanding at the time of any default, up to a maximum of $300,000, provided subsection c. of this section is complied with.

b. The agency shall establish within the fund sufficient reserves and liquid reserves to provide a sufficient and actuarially sound basis for its pledges contained in any guarantee contract entered into pursuant to subsection a. of this section.

c. The agency shall adopt rules and regulations governing the issuance of loan guarantees pursuant to this section, including matters related to the duties and the exercise of the powers of the agency under this section, and the provision of technical assistance to developers, including:

(1) procedures for the submission of requests for such guarantees;

(2) standards and requirements governing the allocation of guarantees to applicant institutional lenders, and determining the fees to be charged therefor and the manner of payment of those fees; and

(3) after consultation with participating institutional lenders, reasonable restrictions as to the maturities and interest rates of any loan, or the return realized therefrom by the institutional lender, and requirements as to commitments by institutional lenders with respect to loans upon which guarantees may be issued.

d. A loan guarantee may be made only with respect to a housing development of 25 units or fewer, or to a segment not exceeding 25 units of a larger housing development projected or in progress.

e. A loan guarantee shall include assurances of long-term affordability to low and moderate income tenants for a portion of the units in the development.

f. A loan guarantee with respect to any housing development may be made when it has been demonstrated to the satisfaction of the agency that the qualified housing developer has met the criteria for a loan guarantee as specified in this section. The agency shall make such a determination within 30 days of submission of an application by a qualified housing developer.

g. Every loan subject to a loan guarantee made pursuant to this section shall be secured by a first lien upon the real property concerned in the development, or segment thereof, with respect to which the loan is made and such other collateral as the agency may consider necessary to secure the interests of the fund in accordance with the provisions and purposes of this act. The agency may, if it deems necessary, require the loan to be secured by a personal loan guarantee by the developer or by a lien upon other real property contained in a development not included in the segment with respect to which the loan is made, or upon any other real property, or interest therein, belonging to the qualified housing developer to whom the loan is made; provided, however, that no personal loan guarantee shall be required of any agent or officer of a nonprofit housing developer.

h. The provisions of P.L.1995, c.359 (C.55:14K-64 et al.), to the extent that they can be read to be in conflict with the provisions of P.L.1983, c.530 (C.55:14K-1 et seq.), shall be read to enlarge the powers granted by that act, or when directly contrary, supersede any such provision.

C.55:14K-69 Agreements between agency and authority.

6. For the purpose of carrying out the housing component of mixed use projects of the New Jersey Economic Development Authority consisting of both housing and commercial development, the agency may enter into agreements with that authority and receive funds from the authority for any of the purposes authorized by this act and specified in the agreement between the agency and the Economic Development Authority.

C.55:14K-70 Funding provided by New Jersey Economic Development Authority.

7. The New Jersey Economic Development Authority shall provide funding for any agreements entered into pursuant to section 6 of P.L.1995, c.359 (C.55:14K-69) on the basis of demand, utilizing (1) such amounts from the Economic Recovery Fund established pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.) as the authority determines to be necessary, within the limits of funding available from that fund, based upon executed agreements between the authority and the Housing and Mortgage Finance Agency concerning mixed-use housing and commercial developments pursuant to section 3 of P.L.1974, c.80 (C.34:1B-3) and (2) other moneys of the authority, including but not limited to moneys available from other business loan programs administered by the authority, that the authority determines to be necessary.

8. 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 this act, unless a different meaning clearly appears from the context:

a. "Authority" means the New Jersey Economic Development Authority, created by section 4 of this act.

b. "Bonds" means bonds or other obligations issued by the authority pursuant to this act or "Economic Recovery Bonds or Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.).

c. "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 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 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.

d. "County" means any county of any class.

e. "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.

f. "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.

g. "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 pol-

lution control facility, radiation contamination control facility, wastewater collection system, wastewater treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site; provided that the authority shall have received from the Commissioner of the State Department of Environmental Protection or his 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) said 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) that such facilities, as designed, will be a pollution control project as defined in this act and are in furtherance of the purpose of abating or controlling pollution.

h. "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 corpora-

tion; 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. 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).

i. "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 and contracts with persons.

j. "Resolution" means any resolution adopted or trust agreement executed by the authority, pursuant to which bonds of the authority are authorized to be issued.

k. "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 this amendatory act.

l. "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.

9. Section 3 of P.L.1983, c.530 (C.55:14K-3) is amended to read as follows:

C.55:14K-3 Definitions.

3. As used in this act:

a. "Agency" means the New Jersey Housing and Mortgage Finance Agency as consolidated by section 4 of P.L.1983, c.530

(C.55:14K-4), or, if that agency shall be abolished by law, the person, board, body or commission succeeding to the powers and duties thereof or to whom its powers and duties shall be given by law.

b. "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, including:

(1) any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guesthouse wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only; (2) a residential health care facility as defined in section 1 of P.L.1953, c.212 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); (3) any foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1); (4) any community residence for the developmentally disabled as defined in section 2 of P.L.1977, c.448 (C.30:11B-2); (5) any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education for the use of its students; (6) 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 Department of Higher Education; and (7) any facility or living arrangement operated by, or under contract with, any State department or agency.

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

d. "Continuing-care retirement community" means any work or undertaking, whether new construction, improvement or rehabilitation, which may be financed in part or in whole by the agency and which is designed to complement fully independent residential units with social and health care services (usually including nursing and medical services) for retirement families and which is intended to provide continuing care for the term of a contract in return for an entrance fee or periodic payments, or both, and which may include such appurtenances and facilities as the agency deems to be necessary, convenient or desirable.

e. "Eligible loan" means a loan, secured or unsecured, made for the purpose of financing the operation, maintenance, construction, acquisition, rehabilitation or improvement of property, or the acquisition of a direct or indirect interest in property, located

in the State, which is or shall be: (1) primarily residential in character or (2) used or to be used to provide services to the residents of an area or project which is primarily residential in character. The agency shall adopt regulations defining the term "primarily residential in character," which may include single-family, multi-family and congregate or other single room occupancy housing, continuing-care retirement communities, mobile homes and non-housing properties and facilities which enhance the livability of the residential property or area; and specifying the types of residential services and facilities for which eligible loans may be made, which may include, but shall not be limited to, parking facilities, streets, sewers, utilities, and administrative, community, educational, welfare and recreational facilities, food, laundry, health and other services and commercial establishments and professional offices providing supplies and services enhancing the area. The term "loan" includes an obligation the return on which may vary with any appreciation in value of the property or interest in property financed with the proceeds of the loan, or a co-ventured instrument by which an institutional lender or the agency assumes an equity position in the property. Any undivided interest in an eligible loan shall qualify as an eligible loan.

f. "Family" means two or more persons who live or expect to live together as a single household in the same dwelling unit; but any individual who (1) has attained retirement age as defined in section 216a of the federal Social Security Act, or (2) is under a disability as defined in section 223 of that act, or (3) such other individuals as the agency by rule or regulation shall include, shall be considered as a family for the purpose of this act; and the surviving member of a family whose other members died during occupancy of a housing project shall be considered as a family for the purposes of permitting continued occupancy of the dwelling unit occupied by such family.

g. "Gross aggregate family income" means the total annual income of all members of a family, from whatever source derived, including but not limited to, pension, annuity, retirement and social security benefits; except that there may be excluded from income (1) such reasonable allowances for dependents, (2) such reasonable allowances for medical expenses, (3) all or any proportionate part of the earnings of gainfully employed minors, or (4) such income as is not received regularly, as the agency by rule or regulation may determine.

h. "Housing project" or "project" means any work or undertaking, other than a continuing-care community, whether new construction, improvement, rehabilitation, or acquisition of existing buildings or units which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing.

i. "Housing sponsor" means any person, partnership, corporation or association, whether organized as for profit or not for profit, to which the agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project.

j. "Institutional lender" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an office in the State, or any insurance company or any mortgage banking firm or mortgage banking corporation authorized to transact business in the State.

k. "Life safety improvement" means any addition, modification or repair to a boarding house which is necessary to improve the life safety of the residents of the boarding house, as certified by the Department of Community Affairs.

l. "Life safety improvement loan" means an eligible loan the proceeds of which are to be used to finance, in whole or in part, the construction, acquisition or rendering of life safety improvements at or to boarding houses.

m. "Loan originator" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an office in the State, or any insurance company or any mortgage banking firm or mortgage banking corporation authorized to transact business in the State, or any agency or instrumentality of the United States or the State or a political subdivision of the State, which is authorized to make eligible loans.

n. "Municipality" means any city of any class or any town, township, village or borough.

o. "Mutual housing" means a housing project operated or to be operated upon completion of construction, improvement or rehabilitation exclusively for the benefit of the families who are entitled to occupancy by reason of ownership of stock in the housing sponsor, or by reason of co-ownership of premises in a horizontal property regime pursuant to P.L.1963, c.168; but the agency may adopt rules and regulations permitting a reasonable percentage of space in such project to be rented for residential or for commercial use.

p. "Persons and families of low and moderate income" mean persons and families, irrespective of race, creed, national origin or sex, determined by the agency to require assistance on account of personal or family income being not sufficient to afford adequate housing. In making such determination the agency shall take into account the following:

(1) the amount of the total income of such persons and families available for housing needs, (2) the size of the family, (3) the cost and condition of housing facilities available and (4) the eligibility of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing. In the case of projects with respect to which income limits have been established by any agency of the federal government having jurisdiction thereover for the purpose of defining eligibility of low and moderate income families, the agency may determine that the limits so established shall govern. In all other cases income limits for the purpose of defining low or moderate income persons shall be established by the agency in its rules and regulations.

q. "Project cost" means the sum total of all costs incurred in the acquisition, development, construction, improvement or rehabilitation of a housing project, which are approved by the agency as reasonable or necessary, which costs shall include, but are not necessarily limited to, (1) cost of land acquisition and any buildings thereon, (2) cost of site preparation, demolition and development, (3) architect, engineer, legal, agency and other fees paid or payable in connection with the planning, execution and financing of the project, (4) cost of necessary studies, surveys, plans and permits, (5) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction, (6) cost of construction, reconstruction, fixtures, and equipment related to the real property, (7) cost of land improvements, (8) necessary expenses in connection with initial occupancy of the project, (9) a reasonable profit or fee to the builder and developer, (10) an allowance established by the agency for working capital and contingency reserves, and reserves for any operating deficits, (11) costs of guarantees, insurance or other additional financial security for the project and (12) the cost of such other items, including tenant relocation, as the agency shall determine to be reasonable and necessary for the development of the project, less any and all net rents and other net revenues received from the operation of the real and personal property on the project site during construction, improvement or rehabilitation.

All costs shall be subject to approval and audit by the agency. The agency may adopt rules and regulations specifying in detail the types and categories of cost which shall be allowable if actually incurred in the development, acquisition, construction, improvement or rehabilitation of a housing project.

r. "Retirement family" means one or more persons related by blood, marriage or adoption who live or expect to live together as a single household in the same dwelling unit, provided that at least one of the persons is an individual who (1) has attained retirement age as defined in section 216a of the Federal Social Security Act, or (2) is under a disability as defined in section 223 of that act, or (3) such individuals as the agency by rule or regulation shall include; and provided further, that the surviving member of a retirement family whose other members died during occupancy of a continuing-care retirement community shall be considered as a retirement family for purposes of permitting continued occupancy of the dwelling unit occupied by such retirement family.

C.55:14K-71 Rules, regulations.

10. The agency is hereby authorized to promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), all rules and regulations necessary to effectuate the purposes of this act.

11. This act shall take effect on the 90th day following enactment, except that section 10 shall take effect immediately.

Approved January 5, 1996.

CHAPTER 360

AN ACT concerning the requirement that certain transactions and agreements be in writing, and revising parts of the statutory law.

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

C.25:1-10 Definitions.

1. Definitions. As used in this act:

"Interest in real estate" means any right, title or estate in real estate, and shall include a lease of real estate, a lien on real

estate, a profit, an easement, an interest in a trust in real estate and a share in a cooperative apartment.

"Transfer of an interest in real estate" means the sale, gift, creation or extinguishment of an interest in real estate.

Source: R.S.25:1-1 through 25:1-4, 25:1-5(d).

C.25:1-11 Writing requirement, conveyances of an interest in real estate.

2. Writing Requirement, Conveyances of an Interest in Real Estate. a. A transaction intended to transfer an interest in real estate shall not be effective to transfer ownership of the interest unless:

(1) a description of the real estate sufficient to identify it, the nature of the interest, the fact of the transfer and the identity of the transferor and the transferee are established in a writing signed by or on behalf of the transferor; or

(2) the transferor has placed the transferee in possession of the real estate as a result of the transaction and the transferee has paid all or part of the consideration for the transfer or has reasonably relied on the effectiveness of the transfer to the transferee's detriment.

b. A transaction which does not satisfy the requirements of this section shall not be enforceable except as an agreement to transfer an interest in real estate under section 4 of this act.

c. This section shall not apply to leases.

d. This section shall not apply to the creation of easements by prescription or implication.

Source: R.S.25:1-1, 25:1-2.

C.25:1-12 Writing requirements, leases.

3. Writing Requirements, Leases. A transaction intended to create a lease of real estate for more than three years shall not be enforceable unless:

a. the leased premises, the term of the lease and the identity of the lessor and the lessee are established in a writing signed by or on behalf of the party against whom enforcement is sought; or

b. the real estate, the term of the lease and the identity of the lessor and the lessee are proved by clear and convincing evidence.

Source: R.S.25:1-1, 25:1-5(d).

C.25:1-13 Enforceability of agreement regarding real estate.

4. Enforceability of Agreements regarding Real Estate. An agreement to transfer an interest in real estate or to hold an interest in real estate for the benefit of another shall not be enforceable unless:

a. a description of the real estate sufficient to identify it, the nature of the interest to be transferred, the existence of the agreement, and the identity of the transferor and transferee are established in a writing signed by or on behalf of the party against whom enforcement is sought; or

b. a description of the real estate sufficient to identify it, the nature of the interest to be transferred, the existence of the agreement and the identity of the transferor and the transferee are proved by clear and convincing evidence.

Source: R.S.25:1-3, 25:1-4, 25:1-5(d).

C.25:1-14 Effect on unwritten transactions.

5. Effect on Unwritten Transactions. Transactions involving an interest in real estate, and agreements to transfer an interest in real estate or to hold an interest in real estate for the benefit of another, which are not established in a writing, are not effective against bona fide purchasers for valuable consideration without notice or against lienors without notice.

C.25:1-15 Liability for the obligation of another.

6. Liability for the Obligation of Another. A promise to be liable for the obligation of another person, in order to be enforceable, shall be in a writing signed by the person assuming the liability or by that person's agent. The consideration for the promise need not be stated in the writing.

Source: R.S.25:1-5(a), 25:1-5(b), 25:1-8.

C.25:1-16 Commissions of real estate broker and business broker, writing required.

7. Commissions of Real Estate Broker and Business Broker, Writing Required. a. As used in this section:

"Business broker" means a person who negotiates the purchase or sale of a business.

"Negotiates" includes identifies, provides information concerning, or procures an introduction to prospective parties, or assists in the negotiation or consummation of the transaction.

"Purchase or sale of a business" includes the purchase or sale of good will or of the majority of the voting interest in a corporation, and of a major part of inventory or fixtures not in the ordinary course of the transferor's business.

"Real estate broker" means a licensed real estate broker or other person performing the services of a real estate agent or broker.

"Transfer or sale" means the transfer of an interest in real estate or the purchase or sale of a business.

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b. Except as provided in subsection d. of this section, a real estate broker who acts as agent or broker on behalf of a principal for the transfer of an interest in real estate, including lease interests for less than three years, is entitled to a commission only if before or after the transfer the authority of the broker is given or recognized in a writing signed by the principal or the principal's authorized agent, and the writing states either the amount or the rate of commission. For the purposes of this subsection, the interest of a mortgagee or lienor is not an interest in real estate.

c. Except as provided in subsection d. of this section, a business broker is entitled to a commission only if before or after the sale of the business, the authority of the broker is expressed or recognized in a writing signed by the seller or buyer or authorized agent, and the writing states either the amount or the rate of commission.

d. A broker who acts pursuant to an oral agreement is entitled to a commission only if:

(1) within five days after making the oral agreement and before the transfer or sale, the broker serves the principal with a written notice which states that its terms are those of the prior oral agreement including the rate or amount of commission to be paid; and

(2) before the principal serves the broker with a written rejection of the oral agreement, the broker either effects the transfer or sale, or, in good faith, enters negotiations with a prospective party who later effects the transfer or sale.

e. The notices provided for in this section shall be served either personally, or by registered or certified mail, at the last known address of the person to be served.

Source: R.S.25:1-9.

8. R.S.25:1-5 is amended to read as follows:

Promises or agreements not binding unless in writing.

25:1-5. Promises or agreements not binding unless in writing. No action shall be brought upon any of the following agreements or promises, unless the agreement or promise, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:

a. (Deleted by amendment, P.L.1995, c.360.)

b. (Deleted by amendment, P.L.1995, c.360.)

c. An agreement made upon consideration of marriage entered into prior to the effective date of the "Uniform Premarital Agreement Act," P.L.1988, c.99 (C.37:2-31 et seq.);

d. (Deleted by amendment, P.L.1995, c.360.)

e. (Deleted by amendment, P.L.1995, c.360.)

f. A contract, promise, undertaking or commitment to loan money or to grant, extend or renew credit, in an amount greater than $100,000, not primarily for personal, family or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For the purposes of this subsection, a contract, promise, undertaking or commitment to loan money shall include agreements to lease personal property if the lease is primarily a method of financing the obtaining of the property; or

g. An agreement by a creditor to forbear from exercising remedies pursuant to a contract, promise, undertaking or commitment which is subject to the provisions of subsection f. of this section.

Repealer.

9. R.S.25:1-1 through R.S.25:1-4 and R.S.25:1-6 through R.S.25:1-9 are repealed.

10. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 361

AN ACT concerning unclaimed property and amending R.S.46:30B-106.

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

1. R.S.46:30B-106 is amended to read as follows:

Unenforceable agreements.

46:30B-106. Unenforceable agreements. All agreements to pay compensation to locate, deliver, recover, or assist in the recovery of property reported under this chapter, made within 24 months after the date that the property is paid or delivered to the administrator, are void and unenforceable. Agreements entered into any

time after such 24-month period are valid only if the fee or compensation agreed upon is not more than 20% of the value of the property recovered, the agreement is in writing, signed by the apparent owner, and clearly sets forth the nature and value of the property and the value of the apparent owner's share after the fee or compensation has been deducted. Agreements entered into before the property was presumed abandoned are valid only if the fee or compensation agreed upon is not more than 35% of the value, the agreement is in writing, signed by the apparent owner, and clearly sets forth the nature and value of the property and the value of the apparent owner's share after the fee or compensation has been deducted. However, nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 362

AN ACT concerning the Delaware River and Bay Authority and authorizing certain projects.

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

C.32:11E-1.4 Delaware River and Bay Authority, project authorized.

1. For the purposes of complying with the provisions of section 1 of P.L.1989, c.191 (C.32:11E-1.1) the Delaware River and Bay Authority created pursuant to the "Delaware-New Jersey Compact," enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C.§1701 et seq.) and P.L.1961, c.66 (C.32:11E-1 et seq.) with the consent of the Congress of the United States in accordance with Pub.L.87-678 (1962), is authorized, pursuant to the procedures set forth in section 1 of P.L.1989, c.191 (C.32:11E-1.1), to undertake a project to lease the property and manage the operations of the Cape May County Airport/Industrial Park, located in the Township of Lower, Cape May County, from the County of Cape May, which shall be considered a project of the

authority as defined pursuant to Article II of the "Delaware-New Jersey Compact," P.L.1961, c.66, as amended by to P.L.1989, c.192 (C.32:11E-1 et seq.), which project shall continue to maintain airport operations, as well as an industrial park, in that location.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 363

AN ACT authorizing and directing the New Jersey State Council on the Arts to recommend to the Legislature for the purpose of designating a State song three songs to be chosen through a competition.

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

1. The New Jersey State Council on the Arts is authorized and directed to recommend to the Legislature three songs for the purpose of designating a State song.

2. The State Council on the Arts shall provide for selection of the songs to be recommended under this act for designation as the State song by holding a competition among songs for which such recommendation is sought. The Council may itself conduct the competition or may, at its discretion, delegate responsibility for the conduct of the competition to a committee of suitable persons who shall be appointed and shall perform their duties under this act in the same manner applicable in the case of bodies charged by the Council with responsibility for the evaluation of applications for grants. Any song already on file with the Council and any song proposed for designation as the State song by legislation that shall have been pending before the Legislature on January 26, 1995, shall be given consideration for such recommendation in that competition without any application for such consideration being required. However, additional information may be requested by the Council if the material on file is not sufficient to properly evaluate a song. Any other song may be proposed for such consideration upon application in accordance with the provisions of section 3 of this act, and no such other song for which such application is not timely made shall receive such consideration.

3. a. On or before the 30th day following the effective date of this act, the State Council on the Arts shall adopt uniform procedures for the submission of applications for consideration hereunder of songs in the competition for the Council's recommendation. Adoption of those procedures shall not be considered the adoption of administrative rules and shall not be subject to the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. On or before the 45th day following the effective date of this act, the Council shall cause public notice to be given of the competition to be held under section 2 of this act. Any such notice shall include a summary of the procedures for submission of applications adopted under subsection a. of this section, shall indicate where and to whom such submissions shall be made and any inquiries concerning the competition may be addressed, and shall specify the last day by which any such application must be made in order for a song proposed therein to receive consideration in that competition. The last day for receipt by the Council of such applications shall be the 30th day following publication of the notice prescribed under this subsection. Any song for which proper application for consideration in the competition is timely made shall receive such consideration.

4. Not later than the 60th day following the last day for the receipt of applications under subsection b. of section 3 of this act, the State Council on the Arts, or any committee to which the Council may have delegated responsibility for conducting the competition prescribed by this act, shall complete its consideration of songs competing to be recommended by the Council for possible designation as the State song. The Council shall thereupon transmit to each House of the Legislature a statement of its recommendation for such designation of three of the songs considered by the Council in that competition, listed in descending order of preference.

5. This act shall take effect immediately and shall expire upon receipt of the Council's recommendation by both Houses of the Legislature.

Approved January 5, 1996.

CHAPTER 364

AN ACT changing definition of and standards governing planned unit developments and amending P.L.1975, c.291.

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

1. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to read as follows:

C.40:55D-6 Definitions; P to R.

3.3. "Party immediately concerned" means for purposes of notice any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

"Performance guarantee" means any security, which may be accepted by a municipality, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

"Planned commercial development" means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate commercial or office uses or both and any residential and other uses incidental to the predominant use as may be permitted by ordinance.

"Planned development" means planned unit development, planned unit residential development, residential cluster, planned commercial development or planned industrial development.

"Planned industrial development" means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate industrial uses and any other uses incidental to the predominant use as may be permitted by ordinance.

"Planned unit development" means an area with a specified minimum contiguous or noncontiguous acreage of 10 acres or more to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

"Planned unit residential development" means an area with a specified minimum contiguous or noncontiguous acreage of five acres or more to be developed as a single entity according to a plan containing one or more residential clusters, which may include appropriate commercial, or public or quasi-public uses all primarily for the benefit of the residential development.

"Planning board" means the municipal planning board established pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

"Plat" means a map or maps of a subdivision or site plan.

"Preliminary approval" means the conferral of certain rights pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46; C.40:55D-48; and C.40:55D-49) prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

"Preliminary floor plans and elevations" means architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form, its scope, scale and relationship to its site and immediate environs.

"Public areas" means (1) public parks, playgrounds, trails, paths and other recreational areas; (2) other public open spaces; (3) scenic and historic sites; and (4) sites for schools and other public buildings and structures.

"Public development proposal" means a master plan, capital improvement program or other proposal for land development adopted by the appropriate public body, or any amendment thereto.

"Public drainage way" means the land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the biological as well as drainage function of the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion and to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, and to lessen nonpoint pollution.

"Public open space" means an open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, State or county agency, or other public body for recreational or conservational uses.

"Public utility" means any public utility regulated by the Board of Regulatory Commissioners and defined pursuant to R.S.48:2-13.

"Quorum" means the majority of the full authorized membership of a municipal agency.

"Residential cluster" means a contiguous or noncontiguous area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance.

"Residential density" means the number of dwelling units per gross acre of residential land area including streets, easements and open space portions of a development.

"Resubdivision" means (1) the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or (2) the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

2. Section 52 of P.L.1975, c.291 (C.40:55D-65) is amended to read as follows:

C.40:55D-65 Contents of zoning ordinance.

52. A zoning ordinance may:

a. Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.

b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources.

c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of this act. The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consider-

ation of the amount, location and proposed use of open space; the location and physical characteristics of the site of the proposed planned development; and the location, design and type of dwelling units and other uses. Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 of this act shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations pursuant to P.L.1972, c.185 or minimum standards for local flood fringe area regulation pursuant to P.L.1972, c.185.

f. Provide for conditional uses pursuant to section 54 of this act.

g. Provide for senior citizen community housing.

h. Require as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

i. Provide for historic preservation pursuant to section 5 of P.L.1991 c.199 (C.40:55D-65.1).

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 365

AN ACT concerning private residential leasehold communities and the rights and obligations of the owners, operators and residents of those communities, and amending P.L.1991, c.483 (C.46:8C-10 et seq.).

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

1. Section 1 of P.L.1991, c.483 (C.46:8C-10) is amended to read as follows:

C.46:8C-10 Definitions.

1. a. For the purposes of this act, "private residential leasehold community" means a community on a parcel of land, or two or more contiguous parcels of land, containing no fewer than ten home sites where such sites are under common ownership and control, other than a cooperative, for the purpose of leasing such sites to the owners of certain homes, including, but not limited to, mobile homes and manufactured homes as those terms are defined in section 3 of the "Manufactured Home Taxation Act," P.L.1983, c.400 (C.54:4-1.4), and specifically including homes constructed entirely or partly on site, the location and use of which may or may not be permanent, and where the owner or owners of the land provide services to the homeowners which are provided by the municipality in which the community is located for the property owners outside the community, 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;

(5) Provisions for the drainage of surface water from home sites and common areas.

b. As used in sections 2 and 3 of this act, "notify" means to place in the United States mail a notice addressed to the officers of the homeowners' association. Each such notice shall be deemed to have been given upon the deposit thereof in the United States mail.

c. As used in section 2 of this act, "offer" means any solicitation by the landowner to the general public.

2. Section 2 of P.L.1991, c.483 (C.46:8C-11) is amended to read as follows:

C.46:8C-11 Rights of homeowners on offer for sale.

2. a. If a private residential leasehold community landowner offers private residential leasehold community land for sale, he shall notify the board of directors of the homeowners' association created pursuant to this act of his offer, stating the price and the terms and conditions of sale.

b. The affected homeowners, by and through an association duly formed in accordance with section 6 of this act, shall have the right to purchase such land, provided two-thirds of the unit owners in the private residential leasehold community have approved the purchase, and further provided that the homeowners meet the price and terms and conditions of the private residential leasehold community landowner by executing a contract with the landowner within 45 days of being notified under subsection a., except as an extension of time may be mutually agreed upon by the landowner and the association; provided, however, that if there is no homeowners' association at the time a private residential leasehold community landowner offers private residential leasehold community land for sale and the landowner notifies homeowners individually as required under subsection b. of section 6 of this act, the period within which the terms and conditions of the private residential leasehold community landowner may be met by execution of a contract between the landowner and a homeowners' association shall be 60 days from the date of the notification of individual homeowners and at any time after notification to the landowner that a homeowners' association has been formed, in accordance with the provisions of subsection a. of section 7 of this act. If a contract between the landowner and the association is not executed within that extension period, then, unless the landowner thereafter elects to offer the land at the same price or at a lower price than specified in his notice to the directors or trustees of the association, he shall have no further obligations under this subsection, and his only obligation shall be as set forth in section 3 of this act.

c. If the landowner thereafter elects to offer the land at the same price or at a lower price than specified in his notice to the directors or trustees of the association pursuant to subsection a. of this section, the homeowners, by and through the association, shall have an additional 10 days after receipt of that offer to meet the price and terms of conditions of the landowner by executing a contract; provided, however, that if more than three months have elapsed since the receipt by the homeowners' association of the previous offer to sell

the land under this subsection, the association shall have 30 days after receipt of the subsequent offer to meet the price and terms of conditions of the landowner by executing a contract.

3. Section 3 of P.L.1991, c.483 (C.46:8C-12) is amended to read as follows:

C.46:8C-12 Right of homeowners on offer to buy.

3. a. If a private residential leasehold community landowner receives a bona fide offer to purchase the land that he intends to consider or make a counter-offer to, he shall notify the directors or trustees of the homeowners' association within 10 business days of receiving the offer, if such an association has been formed in accordance with the provisions of sections 6 through 8 of this act, that he has received the offer. If a homeowners' association has not been formed, the landowner shall, within 10 business days, notify individual homeowners as required under section 6 of this act. The landowner shall not conclude any agreement to sell the land until after the 30-day period therein specified has elapsed.

b. Upon receipt of such notice the board of directors or trustees of the homeowners' association shall appoint from among its members a committee, not exceeding three persons, who may be assisted by such legal and other professional and technical counsel as the board may provide, to receive from the landowner the price and terms of the offer that has been made, and to negotiate the terms upon which the landowner would be willing to sell the private residential leasehold community land to the homeowners' association. Members and assistants to the committee shall be pledged to maintain in confidence any information disclosed to them by the landowner in the course of such negotiations. If any such member or assistant fails to maintain that confidence, the landowner may bring an appropriate action at law for damages or seek an appropriate equitable remedy.

c. Not later than the 30th day next following its receipt of offering terms pursuant to subsection b. of this section, or following a period of extension agreed to by the committee and the landowner, the committee appointed pursuant to subsection b. of this section shall report to the board of directors or trustees of the homeowners' association the price and other material terms upon which the private residential leasehold community landowner has agreed to sell the private residential leasehold community land to the association. In the absence of any agreement between the

landowner and the committee, the landowner shall be deemed to agree to such sale upon the identical terms communicated by him to the committee pursuant to subsection a. of this section. The report of the committee shall include such supporting data and documentation as the committee and the landowner have agreed upon to be so submitted and authorized to be disclosed. The price and other terms so agreed upon and reported shall be binding upon the landowner for 10 days next following the submission of the committee's report, and if agreed to by the board of directors or trustees of the homeowners' association and consented to by two-thirds of the homeowners in that private residential leasehold community land shall constitute a contract of sale.

d. During the period provided for negotiations and for consideration by the association's board of directors or trustees under subsection c. of this section the landowner shall not conclude any agreement for sale of the private residential leasehold community land to any other party, but may negotiate with any other party as to terms and conditions of such an agreement, contingent upon the failure or refusal of the homeowners to exercise their prior right of purchase under this act.

4. Section 4 of P.L.1991, c.493 (C.46:8C-13) is amended to read as follows:

C.46:8C-13 Rights not applicable to certain sales, etc.

4. The provisions of sections 2 and 3 of this act shall not apply to:

a. Any sale or transfer of the property of a private residential leasehold community which is not made in contemplation of changing that property to a use or uses other than as a private residential leasehold community.

b. Any sale or transfer to a person who would be included within the table of descent and distribution if the landowner were to die intestate.

c. Any transfer by gift, devise, or operation of law.

d. Any transfer by a corporation to an affiliate. As used herein, "affiliate" means (1) any shareholder exercising control, or control through attribution as defined under section 318 of the Internal Revenue Code, of the transferring corporation; (2) any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or (3) any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation. For the

purposes of this subsection, control shall mean control as defined in section 304 of the Internal Revenue Code.

e. Any transfer by a partnership to any of its partners, whether general partners or limited partners, or partners or individuals to a corporation where the control of the corporation is substantially the same.

f. Any conveyance of an interest in a private residential leasehold community incidental to the financing of that community.

g. Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering a private residential leasehold community, or any deed given in lieu of such foreclosure.

h. Any sale or transfer between or among joint tenants or tenants in common owning a private residential leasehold community.

i. The purchase of land of a private residential leasehold community by a governmental entity under its powers of eminent domain.

j. Any sale which occurs as a result of a condominium or cooperative conversion.

k. Any sale of real estate owned by the private residential leasehold community landowner which is adjacent to the private residential leasehold community land, but does not have appurtenant to it private residential leasehold sites or spaces or related recreational facilities.

5. Section 5 of P.L.1991, c.483 (C.46:8C-14) is amended to read as follows:

C.46:8C-14 Compliance as prerequisite to recording.

5. In addition to other prerequisites for recording, no deed evidencing transfer of title to a private residential leasehold community land shall be recorded in the office of any county recording officer unless, accompanying the application to transfer the title is an affidavit annexed thereto in which the owner of the private residential leasehold community certifies:

a. with reference to an offer by him for the sale of the land, he has complied with the provisions of section 2 of this act; or

b. with reference to an offer received by him for the purchase of the land, or with reference to a counter-offer which he has made or intends to make to such an offer, he has complied with the provisions of section 3 of this act; or

c. notwithstanding his compliance with section 2 or 3 of this act, as applicable, no contract has been executed for the sale of the land between himself and the homeowners' association; or

d. the provisions of sections 2 and 3 of this act are not applicable to a particular sale or transfer of the land by him, and compliance therewith is not required; or

e. a particular sale or transfer of the land is exempted from the provisions of sections 2 through 5 of this act.

6. Section 6 of P.L.1991, c.483 (C.46:8C-15) is amended to read as follows:

C.46:8C-15 Formation of association.

6. a. In order to exercise the rights provided in sections 2 and 3 of this act, the owners of homes in a private residential leasehold community shall form an association in compliance with this section and sections 7 and 8 of this act. Such an association shall be organized as a corporation or association either for profit or not for profit, upon the consent, in writing, of two-thirds of the owners of homes in the community to become members or shareholders therein. For the purposes of this act, whenever the consent of homeowners is required on any question, there shall be counted only one vote for each dwelling unit. Upon consent by two-thirds of the homeowners, all consenting homeowners shall become members of the association and shall be bound by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant thereto. Upon incorporation and service of the notice described in section 7 of this act, the association shall become the representative of the homeowners in all matters relating to the provisions of this act.

b. If at the time when a landowner determines to offer private residential leasehold community land for sale, or receives a bona fide offer from a prospective purchaser, there is no homeowners' association then in being in the private residential leasehold community, the landowner shall, at least 15 days before proceeding to make such offer of sale, or within 10 business days of receiving such a bona fide offer, as the case may be, notify in writing each owner of a home within the private residential leasehold community that he intends doing so. If, after receipt of such individual notices and within the period fixed by subsection b. of section 2 of this act for execution of a contract, a homeowners' association is formed pursuant to this act, the association so formed shall exercise and perform all the rights, duties and functions provided in this act on and from the day on which notification is made to the private residential leasehold community landowner pursuant to section 7 of this act.

7. Section 7 of P.L.1991, c.483 (C.46:8C-16) is amended to read as follows:

C.46:8C-16 Association notice to landowner, recording.

7. a. Upon receipt of its certificate of incorporation, or, if the homeowners' association does not incorporate, upon its establishment, the homeowners' association shall notify the landowner in writing of such incorporation, or establishment, as appropriate, and shall advise the landowner of the names and addresses of the officers of the homeowners' association by personal delivery upon the landowner or by certified mail, return receipt requested.

b. The homeowners' association shall file with the clerk of the county in which the private residential leasehold community is located a notice of its rights under sections 2 and 3 of this act. The notice shall contain the name of the association, the name of the landowner, and the address or legal description of the land. Within 10 days of the recording of the notice, the association shall provide a copy of the recorded notice to the landowner, at the address provided by the landowner, by certified mail, return receipt requested.

8. Section 8 of P.L.1991, c.483 (C.46:8C-17) is amended to read as follows:

C.46:8C-17 Purpose of association.

8. a. The articles of incorporation of a homeowners' association or the bylaws of any unincorporated homeowners' association formed under this act shall provide:

(1) that the association has the power to negotiate for, acquire, and operate the private residential leasehold community on behalf of the homeowners; and

(2) that the association has the power to convert the private residential leasehold community, once acquired by the homeowners, to a condominium, a cooperative, or other type of ownership.

b. Upon acquisition of the property, the association shall be the entity that creates a condominium, or offers condominium parcels for sale or lease in the ordinary course of business, or, if the homeowners choose a different form of ownership, the entity that owns the record interest in the property and is responsible for the operation of property; provided, however, that if the association converts the private residential leasehold community to a cooperative, an election shall be held within 30 days following the establishment of the cooperative to elect a board of directors of the cooperative.

9. Section 9 of P.L.1991, c.483 (C.46:8C-18) is amended to read as follows:

C.46:8C-18 Governing bylaws; requisites.

9. In order for a homeowners' association to exercise the rights provided in section 2 or 3 of this act, the bylaws of the association shall provide for the following:

a. The directors or trustees of the association and the operation of the association shall be governed by the bylaws.

b. The bylaws shall include, and, if they do not, shall be deemed to include, the following provisions:

(1) The form of administration of the association shall be described, providing for the titles of the officers and for a board of directors or trustees, specifying the powers, duties, manner of selection and removal, and compensation, if any, of the officers, directors or trustees. Unless otherwise provided in the bylaws, the board of directors or trustees shall consist of five members. The board of directors or trustees shall elect from among its members a president, secretary, and treasurer, who shall perform the duties of those offices customarily performed by officers of corporations, and these officers shall serve without compensation and at the pleasure of the board of directors or trustees. The board of directors or trustees may appoint and designate other officers and assign them such duties as it deems appropriate.

(2) Meetings of the board of directors or trustees shall be open to all members of the homeowners' association, and notice of meetings shall be posted in a conspicuous place upon the property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered, and of the nature of those assessments.

(3) Members of the association shall meet at least once each calendar year, and the meeting shall be the annual meeting. All members of the board of directors or trustees shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any member desiring to be a candidate for board membership from being nominated from the floor. The bylaws shall provide the method for calling the meetings of the members, including annual meetings. The method shall provide at least 14 days' written notice to each member in advance of the meeting and require the posting in a conspicuous place on the property of

a notice at least 14 days prior to the meeting. Unless a member waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting and of any meeting other than the annual meeting in which acquisition or conversion of the private residential leasehold community as provided under section 8 of this act is to be voted on, shall be sent by mail to each member, and the mailing shall constitute notice. An officer of the association shall provide an affidavit affirming that the notices were mailed or hand delivered in accordance with the provisions of this section to each member at the address last furnished to the association. These meeting requirements shall not prevent members from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws.

(4) A majority of the members shall constitute a quorum. Decisions shall be made by a majority of members represented at a meeting at which a quorum is present; provided, however, that any decision to acquire the private residential leasehold community shall only be made by not less than two-thirds of all the homeowners and any decision to convert the private residential leasehold community to a condominium or cooperative or other form of ownership following its acquisition by the homeowners' association shall only be made by not less than a majority vote of all of the members of the homeowners' association. In addition, provision shall be made in the bylaws for definition and use of proxy. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.

(5) The board of directors shall mail a meeting notice and copies of the proposed annual budget of expenses to the members not less than 30 days prior to the meeting at which the budget will be considered. If the bylaws provide that the budget may be adopted by the board of directors or trustees, the members shall be given written notice of the time and place at which the meeting of the board of directors or trustees to consider the budget will be held. The meeting shall be open to all members.

(6) The board of directors or trustees may, in any event, propose a budget to the members of the association at a general membership meeting or in writing, and, if the budget or proposed budget is approved by the members at the meeting, or by a majority of their whole number in writing, that budget shall be adopted.

(7) Minutes of all meetings of members and of the board of directors or trustees shall be kept in a businesslike manner and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes for a period of not less than seven years.

(8) The share or percentage of, and manner of sharing, expenses for each member shall be stated.

(9) The manner of collecting from the members their shares of the expenses for the maintenance of the private residential leasehold community property shall be stated. Assessments shall be made against members not less frequently than quarterly, in amounts not less than are required to provide funds in advance for payments of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred.

(10) The method by which the bylaws may be amended consistent with the provisions of this act shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by no less than two-thirds of the members. No bylaw shall be revised or amended by reference to its title only.

(11) The officers and directors or trustees of the association have fiduciary relationship to the members.

(12) Any member of the board of directors or trustees may be recalled and removed from office, with or without cause, by the vote of, or agreement in writing by, a majority of all members. A special meeting of the association membership to recall a member or members of the board of directors or trustees may be called by 10 per cent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting.

c. The bylaws may provide the following:

(1) A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the private residential leasehold community property.

(2) Restrictions on, and requirements respecting, the use and maintenance of homes located within the park, and the use of the private residential leasehold community property, so long as such restrictions and requirements are not inconsistent with the articles of incorporation of the association.

(3) Other provisions not inconsistent with the provisions of this act or with other documents governing the private residential leasehold community property or homes located therein.

d. No amendment to the bylaws may change the proportion or percentage by which members share in the expenses as initially established, unless two-thirds of the members approve the amendment.

10. Section 10 of P.L.1991, c.483 (C.46:8C-19) is amended to read as follows:

C.46:8C-19 Powers, duties of the association.

10. a. An association may contract, sue, or be sued, with respect to the exercise or non-exercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the property. The association may institute, maintain, settle or appeal actions or hearings in its name on behalf of all homeowners concerning matters of common interest, including, but not limited to: the common property; structural components of a building or other improvements; mechanical, electrical and plumbing elements serving the property; and protests of ad valorem taxes on commonly used facilities. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual homeowner or class of homeowners to bring any action which may otherwise be available.

b. The powers and duties of an association include those set forth in this section, in sections 6 and 9 of this act, and in the articles of incorporation and bylaws and any recorded declarations or restrictions encumbering the property, if not inconsistent with the provisions of this act.

c. An association has the power to make and collect assessments and to lease, maintain, repair and replace the common areas upon purchase of the private residential leasehold community property.

d. An association shall maintain financial records in accordance with generally accepted accounting standards and principles. The records shall be open to inspection by association members or their authorized representatives at reasonable times, and written summaries of such records shall be supplied at least annually to the members or their authorized representatives. The failure of the association to permit inspection of its accounting records by members or their authorized representatives entitles any persons prevailing in an enforcement action to recover reasonable attorney's fees from the

person in control of the books and records who, directly or indirectly, knowingly denied access to the books and records for inspection. The records shall include, but not be limited to:

(1) A record of all receipts and expenditures.

(2) An account for each member, designating the name and current mailing address of the member, the amount of each assessment, the dates on which and amounts in which the assessments come due, the amount paid on the account, and the balance due.

e. An association has the power to purchase, acquire, hold, lease, mortgage and convey any proprietary interest in or affecting the land of the private residential leasehold community.

f. An association shall use its best efforts to obtain and maintain adequate insurance to protect the association and the property upon purchase of the private residential leasehold community. A copy of each policy of insurance in effect shall be made available for inspection by members at reasonable times.

g. An association has the authority, without the joinder of any homeowner, to modify, move, or create any easement for ingress and egress, or for the purpose of utilities, if the easement constitutes part of or crosses the property upon purchase of the property. This subsection does not authorize the association to modify or move any easement created in whole or part for the use or benefit of anyone other than the members, or crossing the property of anyone other than the members, without the consent or approval of such person as required by law or the instrument creating the easement. Nothing in this subsection affects the rights of ingress or egress of any member of the association.

11. Section 11 of P.L.1991, c.483 (C.46:8C-20) is amended to read as follows:

C.46:8C-20 Duties of private residential leasehold community owner.

11. The owner of the private residential leasehold community land shall notify in writing each owner of a home therein or, if a homeowners' association has been established under the provisions of this act, the directors or trustees of the association, of any application by the owner of the private residential leasehold community land for a variance within 10 days after the filing for such variance with the approving authority, if the granting of such variance would result in the removal of the homes or relocation of the homeowners residing in that private residential leasehold community.

12. Section 12 of P.L.1991, c.483 (C.46:8C-21) is amended to read as follows:

C.46:8C-21 Relocations, variances, certain, prohibited.

12. No agency of municipal, county or State government, or of any agency or instrumentality thereof, shall approve or take any other final action upon any application for a variance which would result in the removal of homes or relocation of homeowners residing in a private residential leasehold community, without first determining that adequate private residential facilities and circumstances exist for the relocation of those homeowners.

13. This act shall take effect on the first day of the fourth month following enactment.

Approved January 5, 1996.

CHAPTER 366

AN ACT concerning marriage and family therapy and revising parts of statutory law.

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

1. Section 1 of P.L.1968, c.401 (C.45:8B-1) is amended to read as follows:

C.45:8B-1 Declaration relative to practice of marriage and family therapy.

1. The practice of marriage and family therapy in the State of New Jersey is hereby declared to affect the public safety and welfare, and to be subject to regulation and control in the public interest in order to protect the public from the unprofessional, improper, unauthorized and unqualified practice of marriage and family therapy, and from unprofessional conduct by persons licensed to practice marriage and family therapy. This act shall be liberally construed to carry out these objects and purposes.

2. Section 2 of P.L.1968, c.401 (C.45:8B-2) is amended to read as follows:

C.45:8B-2 Definitions.

2. As used in this act, unless the context clearly requires otherwise and except as in this act expressly otherwise provided:

(a) "Licensed marriage and family therapist" means an individual to whom a license has been issued pursuant to the provisions of this act, which license is in force and not suspended or revoked as of the particular time in question.

(b) The "practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples and families, singly or in groups, whether in the general public or in organizations, either public or private, for a fee, monetary or otherwise. "Marriage and family therapy" is a specialized field of therapy which includes premarital counseling and therapy, pre- and post-divorce counseling and therapy, and family therapy. The practice of marriage and family therapy consists of the application of principles, methods and techniques of counseling and psychotherapy for the purpose of resolving psychological conflict, modifying perception and behavior, altering old attitudes and establishing new ones in the area of marriage and family life. In its concern with the antecedents of marriage, with the vicissitudes of marriage, and with the consequences of the failure of marriage, marriage and family therapy keeps in sight its objective of enabling clients to achieve the optimal adjustment consistent with their welfare as individuals, as members of a family, and as citizens in society.

(c) "Board" means the State Board of Marriage and Family Therapy Examiners acting as such under the provisions of this act.

(d) "Recognized educational institution" means any educational institution which grants the bachelor's, master's and doctor's degrees, or any one or more thereof, and which is recognized by the Commission on Higher Education or by any accrediting body acceptable to the State Board of Marriage and Family Therapy Examiners.

3. Section 3 of P.L.1968, c.401 (C.45:8B-3) is amended to read as follows:

C.45:8B-3 Recognition of educational institutions.

3. No educational institution shall be denied recognition as a recognized educational institution solely because its program is not accredited by any professional organization of marriage and family therapists, and nothing in this act or in the administration of this act shall require the registration with the board of educa-

tional institutions of departments of sociology, psychology, social work, marriage and family life or any other specialty or doctoral programs in any of these professional fields.

4. Section 5 of P.L.1968, c.401 (C.45:8B-5) is amended to read as follows:

C.45:8B-5 Licensure required for advertising, use of titles.

5. Commencing January 1, 1969, except as provided in sections 6 and 8 of P.L.1968, c.401 (C.45:8B-6 and 8), a person who is not licensed under this act, shall not advertise the performance of marriage and family therapy services or represent himself to be a licensed practicing marriage and family therapist, use a title or description, including the following titles: marriage and family therapist, counselor, advisor or consultant; a family counselor, therapist, advisor or consultant; a family guidance counselor, therapist, advisor or consultant; a marriage guidance counselor, therapist, advisor or consultant; a family relations counselor, therapist, advisor or consultant; a marriage relations counselor, therapist, advisor or consultant; a marriage counselor, therapist, advisor or consultant; or any other name, style or description denoting that the person so engages in marriage and family therapy. Except as otherwise specifically provided in sections 6 and 8 of P.L.1968, c.401 (C.45:8B-6 and 8), only a person licensed under this act shall advertise the performance of marriage and family therapy or counseling services; use a title or description such as marriage and family therapist, counselor, advisor or consultant; a family guidance counselor, therapist, advisor, or consultant; a family relations counselor, therapist, advisor, or consultant; a marriage counselor, therapist, advisor or consultant; or any other name, style or description denoting that the person is a licensed marriage and family therapist; or licensed to practice marriage and family therapy. The use by a person who is not licensed under this act of such terms, whether in titles or descriptions or otherwise, is not prohibited by this act except when in connection with the offer to practice or the practice of marriage and family therapy as defined in subsection (b) of section 2 of P.L.1968, c.401 (C.45:8B-2). Use of such terms in connection with professional activities other than the rendering of professional marriage and family therapy services to individuals for a fee, monetary or otherwise, shall not be construed as implying that a person is licensed under this act or as an offer to practice or as the practice of marriage and family therapy.

5. Section 6 of P.L. 1968, c.401 (C.45:8B-6) is amended to read as follows:

C.45:8B-6 Unlicensed persons, certain activities permitted.

6. An individual who is not a licensed practicing marriage and family therapist shall not be limited in his activities:

(a) As part of his duties as an employee of:

(1) an accredited academic institution, a federal, State, county or local governmental institution or agency, or a research facility while performing those duties for which he was employed by the institution, agency or facility;

(2) an organization which is nonprofit and which is, in the opinion of the board, a bona fide community agency, while performing those duties for which he was employed by the agency;

(3) a proprietary organization while performing those duties for which he was employed by the organization, provided his marriage and family therapy duties are under the direct supervision of a licensed practicing marriage and family therapist.

(b) As a student of marriage and family therapy, marriage and family therapy intern or person preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility recognized by the board, provided he is designated by such titles as "marriage and family therapy intern," or others, clearly indicating the training status.

(c) As a practicing marriage and family therapist for a period not to exceed 10 consecutive business days or 15 business days in any 90-day period, if he resides outside and his major practice is outside of the State of New Jersey, and gives the board a summary of his qualifications and a minimum of 10 days' written notice of his intention to practice in the State of New Jersey under this subsection, provided he (1) is certified or licensed in another state under requirements the board considers to be the equivalent of requirements for licensing under this act, or (2) resides in a state which does not certify or license marriage and family therapists and the board considers his professional qualifications to be the equivalent of requirements for licensing under this act; and is not adjudged and notified by the board that he is ineligible for licensing under this act.

(d) As a practicing marriage and family therapist for a period not exceeding one year, if he has a temporary permit therefor, which the board may issue upon his filing of an application for licensing under this act.

(e) As a practicing marriage and family therapist for a period not exceeding three years under the supervision of a licensed practicing marriage and family therapist, or a person designated by the board as an eligible supervisor, if he has a temporary permit therefor which the board may issue upon his completion of all the requirements for licensing under this act except the supervised experience requirement.

6. Section 8 of P.L.1968, c.401 (C.45:8B-8) is amended to read as follows:

C.45:8B-8 Construction of act.

8. Nothing in this act shall be construed to prevent a person from doing work of a marriage and family therapy nature, or advertising those services, when acting within the scope of the person's profession or occupation and doing work consistent with the person's training, including physicians, clinical social workers, psychologists, members of the clergy, nurses or any other profession licensed by the State, or students within accredited programs of these professions, if the person does not hold himself out to the public as possessing a license or certificate issued pursuant to this act.

7. Section 9 of P.L.1968, c.401 (C.45:8B-9) is amended to read as follows:

C.45:8B-9 State Board of Marriage and Family Therapy Examiners created.

9. There is hereby created in the Division of Consumer Affairs of the Department of Law and Public Safety, the State Board of Marriage and Family Therapy Examiners, which shall consist of 11 members, who are residents of this State and citizens of the United States, six of whom shall be licensed practicing marriage and family therapists, one of whom shall be a licensed professional counselor currently serving on the Professional Counselor Examiners Committee, and three of whom shall be public members, including the public member appointed pursuant to the provisions of section 2 of P.L.1971, c.60 (C.45:1-2.2), and one of whom shall be a State executive department member appointed pursuant to the provisions of P.L.1971, c.60 (C.45:1-2.1 et seq.).

8. Section 10 of P.L.1968, c.401 (C.45:8B-10) is amended to read as follows:

C.45:8B-10 Qualifications of board members.

10. Each member of the board, except the public members, the State executive department member and the licensed professional counselor, shall have the following qualifications:

(a) (Deleted by amendment, P.L.1995, c.366).

(b) He shall be at the time of his appointment, and shall have been for at least five years prior thereto, actively engaged as a marriage and family therapist in rendering professional services in marriage and family therapy, or in the education and training of students of marriage and family therapy or in marriage and family therapy research, and shall have spent the major portion of the time devoted by him to such activity, during the two years preceding his appointment, in this State.

(c) He shall hold at least a master's degree in marriage and family therapy, social work, marriage or pastoral counseling, psychology, sociology of the family, marriage and family life education, or in a closely allied field or a doctor of medicine; from a recognized educational institution.

9. Section 11 of P.L.1968, c.401 (C.45:8B-11) is amended to read as follows:

C.45:8B-11 Appointment, terms of board members.

11. The members of the board shall be appointed by the Governor. The terms of the first seven members of the board shall expire as follows: two members, June 30, 1970; two members, June 30, 1971; three members, June 30, 1972. Thereafter, except for the State executive department member, each member of the board shall be appointed for a term of three years. A term shall expire on June 30 of the third year of the appointment. If before the expiration of his term, any member shall die, resign, become disqualified or otherwise cease to be a board member, the vacancy shall be filled by the Governor by appointment for the unexpired term. Each appointee shall, upon accepting appointment to the board, take and subscribe to the oath or affirmation prescribed by law and file same in the office of the Secretary of State. Except for the State executive department member, a member shall not serve more than two full terms.

The first appointees, other than the citizen members, shall be deemed to be and shall become licensed practicing marriage counselors immediately upon their appointment and qualification as members of the board.

10. Section 13 of P.L.1968, c.401 (C.45:8B-13) is amended to read as follows:

C.45:8B-13 Powers, duties of board.

13. The board shall, at its first meeting, to be called by the Governor as soon as may be following the appointment of its members, and all annual meetings, to be held in June of each year thereafter, organize by electing from among its members a chairman, vice-chairman and secretary whose election shall be subject to the approval of the Attorney General. The officers shall serve until the following June 30 and until their successors are appointed and qualified. The board shall adopt a seal which shall be affixed to all licenses issued by the board. The board shall administer and enforce the provisions of this act. The board shall hold at least one regular meeting each year; but additional meetings may be held upon call of the chairman or at the written request of any two members of the board. Six members of the board shall constitute a quorum and no action at any meeting shall be taken without at least four votes in accord. The board shall from time to time adopt rules and regulations and amendments and supplements as it may deem necessary to enable it to perform its duties under and to carry into effect the provisions of this act. The board shall examine and pass on the qualifications of all applicants for permits or licenses under this act, and shall issue a permit or license to each qualified successful applicant therefor, attesting to his professional qualifications to engage in the practice of marriage and family therapy.

A member of the board shall be reimbursed for actual expenses reasonably incurred in the performance of his duties as a member of or on behalf of the board.

Subject to the approval of the Attorney General, the board shall be empowered to hire such assistance as it may deem necessary to carry on its activities. All expenditures deemed necessary to carry out the provisions of this act shall be paid by the State Treasurer from the license fees and other sources of income of the board, within the limits of available appropriations according to law, but in no event shall expenditures exceed the revenues of the board during any fiscal year. The board, through its chairman or secretary, may issue subpoenas to compel the attendance of witnesses to testify before the board and produce relevant books, records and papers before the board and may administer oaths in taking testimony, in any matter pertaining to its duties under this act

(including, without limitation, any hearing authorized or required to be held by the board under any provisions of this act), which subpoenas shall issue under the seal of the board and shall be served in the same manner as subpoenas issued out of the Superior Court. Every person who refuses or neglects to obey the command of any subpoena, or who, after hearing, refuses to be sworn and testify, shall, in either event, be liable to a penalty of $50 to be sued for in the name of the board in any court of competent jurisdiction, which penalty when collected shall be paid to the secretary of the board.

11. Section 14 of P.L.1968, c.401 (C.45:8B-14) is amended to read as follows:

C.45:8B-14 Application for license.

14. A person desiring to obtain a license as a practicing marriage and family therapist shall make application therefor to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that he:

(a) Is at least 21 years of age;

(b) Is of good moral character;

(c) Is not engaged in any practice or conduct which would be a ground for refusing to issue, suspending or revoking a license issued pursuant to this act;

(d) Qualifies for licensing by an examination of credentials or for admission to an assembled examination to be conducted by the board.

12. Section 18 of P.L.1968, c.401 (C.45:8B-18) is amended to read as follows:

C.45:8B-18 Qualifications for admission to examination.

18. A person applying to the board, after January 1, 1970, may be admitted to an examination if he meets the qualifications set forth in subsections (a), (b) and (c) of section 14 of P.L.1968, c.401 (C.45:8B-14) and provides evidence satisfactory to the board that he has met educational and experiential qualifications as follows:

(a) Educational Requirement:

To meet the educational requirements, an applicant shall have a minimum of a master's degree in marriage and family therapy, a master's degree in social work, or a graduate degree in a related field and shall demonstrate that he has completed substantially equivalent course work content and training to a master's degree in marriage and family therapy; and the degree shall have been obtained from an accredited institution so recognized at the time of granting of the degrees.

Pursuant to regulations adopted by the board, an applicant with a graduate degree in a related field which does not provide training and course work substantially equivalent in content to a master's degree in marriage and family therapy, shall be deemed to meet the educational requirements set forth in this section upon satisfactory completion of either a post graduate degree recognized by the board, or a program of training and course work at an institute or training program accredited by the Commission on Accreditation for Marriage and Family Therapy Education.

(b) Experience Requirements:

To meet the experience requirements, an applicant shall have five years of full-time counseling experience, or its equivalent, of a character approved by the board, two years of which must have been in marriage and family therapy; two of the five required years must have been under the supervision of a person holding a degree specified in subsection (a) of this section and who has himself had no less than five full-time years of professional experience or the equivalent.

13. Section 19 of P.L.1968, c.401 (C.45:8B-19) is amended to read as follows:

C.45:8B-19 Examinations.

19. The board shall conduct examinations at least once a year at a time and place to be designated by it. Examinations shall be written and, if the board deems advisable, oral. In any written examination each applicant shall be designated by a number so that his name shall not be disclosed to the board until examinations have been graded. Examinations shall include questions in such theoretical and applied fields as the board deems most suitable to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy. An applicant shall be held to have passed an examination upon the affirmative vote of at least six members of the board.

14. Section 21 of P.L.1968, c.401 (C.45:8B-21) is amended to read as follows:

C.45:8B-21 Licensing of person licensed out-of-State.

21. The board may issue a license by an examination of credentials to any applicant who presents evidence that he is licensed or certified as a marriage and family therapist in another state with requirements for that license or certificate such that the board is

of the opinion that the applicant is competent to engage in the practice of marriage and family therapy in this State.

15. Section 26 of P.L.1968, c.401 (C.45:8B-26) is amended to read as follows:

C.45:8B-26 Application for reinstatement.

26. Application may be made to the board for reinstatement, at any time after the expiration of one year from the date of revocation of a license. The application shall be in writing and shall be accompanied by the reinstatement fee. The board shall not reinstate any applicant, unless satisfied that he is competent to engage in the practice of marriage and family therapy, and if the board deems it necessary for its determination, then it may require the applicant to pass an examination.

16. Section 29 of P.L.1968, c.401 (C.45:8B-29) is amended to read as follows:

C.45:8B-29 Communication privileged; waiver.

29. A communication between a marriage and family therapist and the person or persons in therapy shall be confidential and its secrecy preserved. This privilege shall not be subject to waiver, except where the marriage and family therapist is a party defendant to a civil, criminal or disciplinary action arising from the therapy, in which case, the waiver shall be limited to that action.

17. Section 33 of P.L.1968, c.401 (C.45:8B-33) is amended to read as follows:

C.45:8B-33 Short title.

33. This act shall be known and may be cited as the "Practicing Marriage and Family Therapy Act."

18. Section 3 of P.L.1993, c.340 (C.45:8B-36) is amended to read as follows:

C.45:8B-36 Definitions.

3. As used in this act:

"Board" means the State Board of Marriage and Family Therapy Examiners.

"Committee" means the Professional Counselor Examiners Committee.

"Counseling" means offering to assist or assisting, for a fee or other compensation, an individual or group through a counseling relationship to develop an understanding of interpersonal and intrapersonal problems and to plan and act on a course of action to restore optimal functioning to that individual or group.

"Counseling specialty" means a field of specialization in which counseling takes place and which has been designated as a counseling specialty by the committee.

"Licensed associate counselor" means an individual who holds a current, valid license as a licensed associate counselor pursuant to this act and who practices counseling under the direct supervision of a licensed professional counselor.

"Licensed professional counselor" means an individual who holds a current, valid license as a licensed professional counselor pursuant to this act.

19. Section 15 of P.L.1993, c.340 (C.45:8B-48) is amended to read as follows:

C.45:8B-48 Construction of act.

15. Nothing in this act shall be construed to apply to:

a. The activities and services of qualified members of other professions, including physicians, psychologists, registered nurses, marriage and family therapists, attorneys, social workers or any other professionals licensed by the State, when acting within the scope of their profession and doing work of a nature consistent with their training, provided they do not hold themselves out to the public as possessing a license issued pursuant to this act or represent themselves by any professional title regulated by this act.

b. The activities, services and use of an official title on the part of a person employed as a counselor by any federal, State, county, or municipal agency; or public or private educational institution, but only when these persons are performing counseling or counseling-related activities within the scope of their employment.

c. The activities and services of a student, intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study, and if the person is clearly designated a "Counselor intern."

d. The activities and services in this State of a nonresident person rendered on not more than 30 days during any calendar

year, if that person is duly authorized to perform those activities and services under the laws of his residence.

e. The activities and services of a rabbi, priest, minister, Christian Science practitioner or clergyman of any religious denomination or sect, if those activities and services are within the scope of the performance of his regular or specialized ministerial duties and for which no separate charge is made, or when these activities are performed with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering the service remains accountable to the established authority thereof.

f. The activities, services, titles and descriptions of persons employed as professionals or volunteers in the practice of counseling for public or private nonprofit organizations or charities.

g. The activities and services of persons employed as peer counselors in organizations devoted to prevention of alcoholism, drug abuse, or relief of emotional effects of rape or other crimes, and telephone "hotline" organizations.

20. Section 1 of P.L.1971, c.60 (C.45:1-2.1) is amended to read as follows:

C.45:1-2.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State

Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, and the State Board of Public Movers and Warehousemen.

21. Section 2 of P.L.1971, c.60 (C.45:1-2.2) is amended to read as follows:

C.45:1-2.2 Membership of certain boards and commissions; appointment, removal, quorum.

2. a. All members of the several professional boards and commissions shall be appointed by the Governor in the manner prescribed by law; except in appointing members other than those appointed pursuant to subsection b. or subsection c., the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the appropriate professional organizations of this State.

b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Social Work Examiners, and the State Board of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove

any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause.

No public member appointed pursuant to this section shall have any association or relationship with the profession or a member thereof regulated by the board of which he is a member, where such association or relationship would prevent such public member from representing the interest of the public. Such a relationship includes a relationship with members of one's immediate family; and such association includes membership in the profession regulated by the board. To receive services rendered in a customary client relationship will not preclude a prospective public member from appointment. This paragraph shall not apply to individuals who are public members of boards on the effective date of this act.

It shall be the responsibility of the Attorney General to insure that no person with the aforementioned association or relationship or any other questionable or potential conflict of interest shall be appointed to serve as a public member of any board regulated by this section.

Where a board is required to examine the academic and professional credentials of an applicant for licensure or to test such applicant orally, no public member appointed pursuant to this section shall participate in such examination process; provided, however, that public members shall be given notice of and may be present at all such examination processes and deliberations concerning the results thereof, and, provided further, that public members may participate in the development and establishment of the procedures and criteria for such examination processes.

c. The Governor shall designate a department in the Executive Branch of the State Government which is closely related to the profession or occupation regulated by each of the boards or commissions designated in section 1 of P.L.1971, c.60 (C.45:1-2.1) and shall appoint the head of such department, or the holder of a designated office or position in such department, to serve without compensation at the pleasure of the Governor as a member of such board or commission.

d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.

22. Section 1 of P.L.1974, c.46 (C.45:1-3.1) is amended to read as follows:

C.45:1-3.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

23. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read as follows:

C.45:1-15 Application of act.

2. The provisions of this act shall apply to the following boards and all professions or occupations regulated by or through such boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

C.45:8B-2.1 Terms refer to "State Board of Marriage and Family Therapy Examiners," "marriage and family therapist."

24. Whenever the term "State Board of Marriage Counselor Examiners" or "marriage counselor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to refer to the "State Board of Marriage and Family Therapy Examiners" and "marriage and family therapist," respectively.

25. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 367

AN ACT concerning registered dental assistants and limited registered dental assistants and amending and supplementing P.L.1979, c.46.

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

1. Section 2 of P.L.1979, c.46 (C.45:6-49) is amended to read as follows:

C.45:6-49 Definitions.

2. For the purposes of this act:

a. "Board" means the New Jersey State Board of Dentistry.

b. "Registered dental assistant" means any person who has fulfilled the requirements for registration established by this act and who has been registered by the board. A registered dental assistant shall work under the direct supervision of a licensed dentist.

c. "Dental assistant" means any person who is trained by formal education or office internship to perform, under the direct supervision of a dentist, any routine office procedure, not including an intra-oral procedure, in the office of a dentist.

d. "Dental hygienist" means any person who performs in the office of any licensed dentist or in any appropriately equipped school, licensed clinic, or public or private institution under the supervision of a licensed dentist, those educational, preventive and therapeutic services and procedures which licensed dental hygienists are trained to perform, and which are specifically per-

mitted by regulation of the board, and such intra-oral clinical services which are primarily concerned with preventive dental procedures, including, but not limited to, during the course of a complete prophylaxis, removing all hard and soft deposits and stains from the surfaces of the human teeth to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, applying indicated topical agents, surveying intra- and extra-oral structures, noting deformities, defects and abnormalities thereof, performing a complete oral prophylaxis and providing clinical instruction to promote the maintenance of dental health.

e. "Direct supervision" means acts performed in the office of a licensed dentist wherein he is physically present at all times during the performance of such acts and such acts are performed pursuant to his order, control and full professional responsibility.

f. "Supervision" means acts performed pursuant to a dentist's written order, control and full professional responsibility, whether or not he is physically present.

g. "Limited registered dental assistant" means any person who has fulfilled the requirements for registration established by this amendatory and supplementary act and who has been registered by the board. A limited registered dental assistant shall be limited to working under the direct supervision of a dentist who conducts a limited dental practice in the dental specialty for which the assistant has been trained and registered, and in performing those intra-oral procedures as defined by the board which are involved in that specialty.

2. Section 3 of P.L.1979, c.46 (C.45:6-50) is amended to read as follows:

C.45:6-50 Additional powers, duties of board.

3. The board shall have the following additional powers and duties, under this act:

a. To examine, admit, and deny persons applying for admission to the practice of dental hygiene;

b. To issue licenses to practice dental hygiene;

c. To certify academic and clinical institutions and hospitals which educate and train persons for the practice of dental hygiene or dental assisting in accordance with standards substantially similar to those of the American Dental Association's Commission on Accreditation of Dental and Dental Auxiliary Educational Programs and Council on Hospital Dental Service and taking into

consideration the advice of the New Jersey Commission on Higher Education and the New Jersey Department of Education;

d. To issue certificates of good standing to dental hygienists who hold a valid subsisting license to practice in this State;

e. To establish by rule or regulation, standards for the training and utilization of registered dental assistants and limited registered dental assistants;

f. To establish and recognize councils and committees which may advise and make recommendations to the board on various aspects of the education and practice for dental hygienists, registered dental assistants, limited registered dental assistants or dental assistants;

g. To prescribe expanded functions to be performed solely by dental hygienists and to be performed by dental hygienists, registered dental assistants and limited registered dental assistants under a single standard of proficiency necessary and proper to protect and promote the public health and welfare of the citizens of this State, and impose such restrictions and requirements, including the setting of educational prerequisites to the performance of such functions and the administration of examinations, as are necessary to insure adherence to the adopted standard of proficiency. Expansion and assignment of such functions, training and examination procedures shall be developed in consultation with the relevant advisory councils;

h. To adopt rules and regulations to achieve the objectives contemplated by this act, pursuant to the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.);

i. To do any and all other things which may be appropriate to achieve the objectives contemplated by this act, or which may be useful in executing any of the duties, powers or functions of the board.

3. Section 8 of P.L.1979, c.46 (C.45:6-55) is amended to read as follows:

C.45:6-55 Rules, procedure for registration.

8. a. The board shall adopt rules and procedure for the registration of dental assistants and limited dental assistants. Every applicant for registration shall satisfactorily complete an examination approved by the board and a nationally recognized accrediting agency, which examination shall require the applicant to demonstrate that the applicant is capable of performing the functions of a registered dental assistant or limited registered dental assistant, as

the case may be, and shall be administered within the State at least once each year at such time and place as the board designates, and

(1) Have satisfactorily completed and graduated from a training program for dental assistants accredited by the American Dental Association's Commission on Accreditation of Dental and Dental Auxiliary Educational Programs and approved by the board, or

(2) Have a high school diploma or its equivalent and at least two years' work experience as a dental assistant.

b. For three years from the date the first internship program is implemented pursuant to the provisions of section 10 or 11 of P.L.1995, c.367 (C.45:6-50.1 or C.45:6-50.2), a dental assistant or limited dental assistant may satisfy the work experience requirement of paragraph (2) of subsection a. of this section by completing at least six months' work experience as a dental assistant and have successfully completed a board approved internship in the office and under the direct supervision of a licensed New Jersey dentist. The internship for a registered dental assistant shall consist of three months' training in the office of a dental practitioner under a licensed dentist's direct supervision and the internship for a limited registered dental assistant shall consist of three months' training in the office of a dentist under a licensed dentist's direct supervision who has received a permit of limited dental practice in a specialty area from the board.

c. The board by rule or regulation shall specify those intraoral procedures which may be performed by registered dental assistants and limited registered dental assistants, provided that such procedures shall not include those procedures which are traditionally performed by dental hygienists.

4. Section 9 of P.L.1979, c.46 (C.45:6-56) is amended to read as follows:

C.45:6-56 Requirement of continuing education.

9. a. Four years from March 21, 1979 and every four years thereafter, each person licensed to practice dental hygiene or registered as a registered dental assistant or limited registered dental assistant in this State shall provide the board with a certified statement, upon a form issued and distributed by the board, that such licensed or registered person has attended, or participated in not less than 20 hours of continuing education in dental hygiene or dental assisting as follows: lectures or study club sessions dealing with clinical subjects, college post-graduate courses, sci-

entific sessions of conventions, research on clinical subjects, service as a clinician or any other such evidence of continuing education which the board may approve.

b. The board shall notify each licensed or registered person of any failure to comply with this requirement, and shall further notify said person that upon continued failure to comply for a period of three months from the date of notice, the board may, at its discretion take action pursuant to section 11 of this act.

c. The board, in its discretion, may waive any of the requirements of this section in cases of certified illness or undue hardship to be determined on an individual basis.

5. Section 11 of P.L.1979, c.46 (C.45:6-58) is amended to read as follows:

C.45:6-58 Penalties.

11. Any person practicing dental hygiene in this State without first having obtained a license as provided by this act, or without the current biennial certificate of registration, or contrary to any of the provisions of this act, or any person who fails to comply with the provisions of section 9 of P.L.1979, c.46 (C.45:6-56), except a person on the inactive status list, or who practices dental hygiene or works as a registered dental assistant or limited registered dental assistant under a false or assumed name, or buys, sells or fraudulently obtains a diploma or certificate showing or purporting to show graduation or completion of a course in dental hygiene or dental assisting, or who violates any of the provisions of this act, shall be liable to a penalty of $300.00 for the first offense and of $500.00 for the second and each subsequent offense.

6. Section 12 of P.L.1979, c.46 (C.45:6-59) is amended to read as follows:

C.45:6-59 Refusal to grant, suspension, revocation of license.

12. The board may refuse to grant or may suspend or revoke a license to practice dental hygiene or the registration of a dental assistant or limited dental assistant upon proof to the satisfaction of the board that the applicant for or holder of such license or registration:

a. Has secured such license or registration through deceit, fraud or willful misrepresentation;

b. Has been convicted of a crime involving moral turpitude;

c. Habitually uses drugs or intoxicants;

d. Has been guilty of malpractice or willful or gross neglect in the practice of dental hygiene or dental assisting; or

e. Has violated more than once any of the provisions of this act. Before any license or registration shall be suspended or revoked, the accused person shall be furnished with a copy of the complaint and be given a hearing before said board in person or by attorney, and any person whose license or registration shall be suspended or revoked in accordance with this section, shall be deemed an unlicensed or unregistered person during the period of such suspension or revocation and shall be subject to the penalties prescribed in this act for persons who practice dental hygiene or work as a registered dental assistant or limited registered dental assistant without having first obtained a license or registration to do so. Any person whose license or registration shall be suspended or revoked under authority of this act may, in the discretion of the board, be relicensed or re-registered at any time without an examination on application being made to the board.

7. Section 13 of P.L.1979, c.46 (C.45:6-60) is amended to read as follows:

C.45:6-60 Disorderly persons offense; fines.

13. Any person, company or association who commits any of the following acts is a disorderly person, and upon every conviction thereof shall be subject to a fine of not less than $300.00 nor more than $500.00 or by imprisonment for not less than 30 days nor more than 90 days, or by both such fine and imprisonment:

a. Selling or bartering, or offering to sell or barter, any diploma or document showing or purporting to show graduation as a dental hygienist or dental assistant;

b. Purchasing or procuring by barter any such diploma, certificate or transcript with intent that it be used as evidence of the qualifications of the holder to practice dental hygiene or work as a registered dental assistant or limited registered dental assistant, or in fraud of the laws regulating such practice or work;

c. With fraudulent intent, altering in a material regard, such diploma, certificate or transcript;

d. Using or attempting to use such diploma, certificate or transcript which has been purchased, fraudulently issued, and counterfeited or materially altered, either as a license or registration or color of license or registration to practice dental hygiene or work

as a registered dental assistant or limited registered dental assistant, or in order to procure registration as a dental hygienist; or

e. In any affidavit or examination required of an applicant for examination, license or registration under the laws regulating the practice of dental hygiene or dental assisting, willfully making a false statement in a material regard, or impersonating another applicant at an examination.

8. Section 14 of P.L.1979, c.46 (C.45:6-61) is amended to read as follows:

C.45:6-61 Penalty for violations by dentist.

14. Any licensed dentist who shall permit any unlicensed or unregistered person to practice dental hygiene or work as a registered dental assistant or limited registered dental assistant under his direction or control or shall permit or direct a licensed dental hygienist, registered dental assistant or limited registered dental assistant to perform any act not authorized in this act shall be guilty of a violation of this act and of conduct constituting willful and gross malpractice or willful and gross neglect in the practice of dentistry.

9. Section 23 of P.L.1979, c.46 (C.45:6-69) is amended to read as follows:

C.45:6-69 Compliance with law on radiologic technology.

23. Nothing herein shall be construed to exempt registered dental assistants, limited registered dental assistants, dental assistants or other dental office personnel from compliance with P.L.1981, c.295 (C.26:2D-24 et seq.).

C.45:6-50.1 Required training for dental assistant internship programs.

10. The board shall establish by rule or regulation the required training which shall be included in dental assistant internship programs. An internship program for an individual seeking registration as a dental assistant shall include training in the intraoral procedures that are performed in the office of a dentist licensed for general practice. The board shall establish a committee consisting of two board members and three licensed dentists which shall develop and monitor a satisfactory internship program for individuals seeking registration as a dental assistant.

C.45:6-50.2 Required training for limited dental assistant internship program.

11. Upon the request of a recognized professional dental specialty society, the board shall establish by rule or regulation the

required training which shall be included in a limited dental assistant internship program. An internship program for an individual seeking registration as a limited dental assistant shall include training in those intra-oral procedures that are performed in the office of a dentist who has received from the board a permit of limited dental practice in the specialty area for which the assistant seeks registration. The board shall establish a committee consisting of two board members and three licensed dentists which shall develop and monitor a satisfactory internship program for individuals seeking registration as a limited dental assistant.

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

Approved January 5, 1996.

CHAPTER 368

AN ACT providing for the issuance of certain license plates for the purpose of assisting in the support and funding of historic preservation projects, and supplementing chapter 3 of Title 39 of the Revised Statutes.

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

C.39:3-27.72 Definitions relative to issuance of historic preservation license plates.

1. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

"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;

"Fund" means the "Historic Preservation License Plate Fund" created pursuant to section 4 of this act.

"Historic resources" means the historic resources in New Jersey, and shall include, but need not necessarily be limited to, buildings, sites, and structures listed in or eligible for listing in

the New Jersey Register of Historic Places, and museums and library collections related to New Jersey history.

C.39:3-27.73 Issuance of historic preservation license plates.

2. The Director of the Division of Motor Vehicles shall, upon proper application therefor, issue historic preservation license plates for any motor vehicle owned or leased and registered in the State. In addition to the registration number and other markings or identification otherwise prescribed by law, an historic preservation license plate shall display words or a slogan and an emblem indicating support for, or an interest in, historic preservation. The words or slogan and emblem shall be chosen by the director in consultation with the Historic Preservation License Plate Advisory Committee established pursuant to subsection a. of section 4 of this act; 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 historic 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.

C.39:3-27.74 Application for historic preservation license plate.

3. a. Application for issuance of an historic preservation license plate shall be made to the division on forms and in a manner as may be prescribed by the director. In order to be deemed complete, an application shall be accompanied by a fee of $50 payable to the division, which fee shall be in addition to all fees otherwise required by law for the registration of the motor vehicle.

b. The annual fee for the registration certificate of a motor vehicle that has been issued an historic preservation license plate pursuant to the provisions of this act shall include in each year subsequent to the year of issuance a fee in the amount of $10, which fee shall be in addition to all fees otherwise required by law for the renewal of the registration of the motor vehicle and shall be collected by the division and deposited in the Historic Preservation License Plate Fund created pursuant to section 4 of this act.

C.39:3-27.75 "Historic Preservation License Plate Fund" created.

4. a. There is created in the Department of Environmental Protection a special non-lapsing fund to be known as the "Historic Preservation License Plate Fund." The fund shall be administered by the New Jersey Historic Trust. There shall be deposited in the

fund the amount collected from all license plate fees collected pursuant to section 3 of this act, less the amounts necessary to reimburse the division for administrative costs pursuant to section 5 of this act. Monies deposited in the fund shall be dedicated for use in the awarding of grants to State agencies, local government units, and qualifying tax-exempt nonprofit organizations to meet costs related to the physical preservation of, development of interpretive and educational programming for, or operation of New Jersey's historic resources. Approval of any grants shall be made by the "Historic Preservation License Plate Advisory Committee," which shall be established in the Department of Environmental Protection and shall comprise the following: the Chairman of the Board of Trustees of the New Jersey Historic Trust, and two other trustees thereof, one of whom shall be the Executive Director of the New Jersey Historical Commission; a representative of Preservation New Jersey; a representative of the New Jersey Association of Museums; a representative of the League of Historical Societies of New Jersey; a representative of the New Jersey Council for the Social Studies; a representative of the New Jersey Council on the Humanities; and the Administrator of the Historic Preservation Office in the Department of Environmental Protection.

b. Monies deposited in the fund shall be held in interest-bearing accounts in public depositories as defined pursuant to section 1 of P.L.1970, c.236 (C.17:9-41), and may be invested or reinvested in such securities as are approved by the State Treasurer. Interest or other income earned on monies deposited in the fund, and any monies which may be appropriated or otherwise become available for the purposes of the fund, shall be credited to and deposited in the fund for use as set forth in this act.

C.39:3-27.76 Use of funds to reimburse division.

5. a. Prior to the deposit of license plate fees collected pursuant to section 3 of this act into the fund, amounts thereof as are necessary shall be used to reimburse the division for all costs reasonably and actually incurred, as stipulated by the director, for:

(1) producing, issuing, renewing, and publicizing the availability of historic preservation license plates; and

(2) any initial computer programming changes that may be necessary to implement the historic preservation license plate program established by this act.

b. The director shall annually certify to the commissioner the average cost per license plate incurred in the immediately preced-

ing year by the division in producing, issuing, renewing, and publicizing the availability of historic preservation license plates. The annual certification of the average cost per license plate shall be approved by the Joint Budget Oversight Committee, or its successor.

c. In the event that the average cost per license plate as certified by the director and approved by the Joint Budget Oversight Committee, or its successor, is greater than the $50 application fee established in subsection a. of section 3 of this act in two consecutive fiscal years, the director may discontinue the issuance of historic preservation license plates.

C.39:3-27.77 Notification of eligible motorists.

6. The director shall notify eligible motorists of the opportunity to obtain historic preservation license plates by including a notice with all motor vehicle registration renewals, and by posting appropriate posters or signs in all division facilities and offices, as may be provided by the department. The notices, posters, and signs shall be designed by the Historic Preservation License Plate Advisory Committee with the approval of the commissioner. The designs shall be subject to the approval of the director, and the commissioner shall supply the division with the notices, posters, and signs to be circulated or posted by that division.

C.39:3-27.78 Procedures set forth in interagency memorandum of agreement.

7. The commissioner, the New Jersey Historic Trust, the Historic Preservation License Plate Advisory Committee, the director, and the State Treasurer shall develop and enter into an interagency memorandum of agreement setting forth the procedures to be followed by the departments, the New Jersey Historic Trust, the Historic Preservation License Plate Advisory Committee, and the division in carrying out their respective responsibilities under this act.

8. This act shall take effect on the 180th day after enactment, but the Commissioner of Environmental Protection, the New Jersey Historic Trust, the Historic Preservation License Plate Advisory Committee, the State Treasurer, and the Director of the Division of Motor Vehicles may take such anticipatory acts in advance of that date as may be necessary for the timely implementation of this act upon the effective date thereof.

Approved January 5, 1996.

CHAPTER 369

AN ACT concerning the receipt of disability retirement allowances and workers' compensation benefits and amending various parts of the statutory law.

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

1. N.J.S.18A:66-32.1 is amended to read as follows:

Periodic benefits payable under Workers' Compensation Law; salary deductions paid by employer; retirement benefits application.

18A:66-32.1. a. If any member of the retirement system receives periodic benefits payable under the workers' compensation law during the course of his active service, in lieu of his normal compensation, his regular salary deductions shall be paid to the retirement system by his employer. Such payments shall be computed, in accordance with N.J.S.18A:66-29, at the rate of contribution on the base salary subject to the retirement system, just prior to the receipt of the workers' compensation benefits. The moneys paid by the employer shall be credited to the member's account in the annuity savings fund and shall be treated as employee contributions for all purposes. The employer will terminate the payment of these moneys when the periodic benefits payable under the workers' compensation law are terminated or when the member retires.

The member for whom the employer is making such payments, will be considered as if he were in the active service.

b. An application for retirement benefits may be approved by the board of trustees while the member, applying for such benefits, is in receipt of periodic benefits under the workers' compensation law. If a retirant receiving an accidental disability retirement allowance becomes a recipient of periodic benefits under the workers' compensation law after the date of retirement, the pension portion of the retirement allowance payable to the retirant shall be reduced, during the period of the payment of the periodic benefits, dollar-for-dollar in the amount of the periodic benefits received after the date of retirement, subject to the provisions of N.J.S. 18A:66-69. The reduction provided for herein shall not affect the retirant's pension adjustment benefits or survivor benefits that may be payable upon the death of the retirant.

If an accidental disability retirant receives a retirement allowance without reduction and periodic benefits under the workers'

compensation law for any period of time after the date of retirement, the retirant shall repay to the retirement system the amount of the pension portion of the retirement allowance which should have been subject to reduction under this subsection. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retirant's retirement allowance and pension adjustment benefits. If the retirant dies before full repayment of the amount required, the remaining balance shall be deducted from any death benefits payable on behalf of the retirant.

2. Section 28 of P.L.1966, c.217 (C.43:15A-25.1) is amended to read as follows:

C.43:15A-25.1 Periodic benefits payable under Workers' Compensation Law; salary deductions paid by employer; retirement benefits application.

28. a. If any member of the retirement system receives periodic benefits payable under the Workers' Compensation Law during the course of his active service, in lieu of his normal compensation, his regular salary deductions shall be paid to the retirement system by his employer. Such payments shall be computed, in accordance with section 25 of P.L.1954, c.84 (C.43:15A-25), at the rate of contribution on the base salary subject to the retirement system, just prior to the receipt of the workers' compensation benefits. The moneys paid by the employer shall be credited to the member's account in the annuity savings fund and shall be treated as employee contributions for all purposes. The employer will terminate the payment of these moneys when the periodic benefits payable under the Workers' Compensation Law are terminated or when the member retires.

The member for whom the employer is making such payments, will be considered as if he were in the active service and shall be permitted to continue to make contributions to purchase the additional death benefit coverage provided by section 57 of P.L.1954, c.84 (C.43:15A-57).

b. An application for retirement benefits may be approved by the board of trustees while the member, applying for such benefits, is in receipt of periodic benefits under the Workers' Compensation Law. If a retirant receiving an accidental disability retirement allowance becomes a recipient of periodic benefits under the workers' compensation law after the date of retirement, the pension portion of the retirement allowance payable to the retirant shall be reduced, during the period of the payment of the periodic benefits, dollar-for-dollar in the amount of the periodic

benefits received after the date of retirement, subject to the provisions of section 64 of P.L.1954, c.84 (C.43:15A-64). The reduction provided for herein shall not affect the retirant's pension adjustment benefits or survivor benefits that may be payable upon the death of the retirant.

If an accidental disability retirant receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any period of time after the date of retirement, the retirant shall repay to the retirement system the amount of the pension portion of the retirement allowance which should have been subject to reduction under this subsection. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retirant's retirement allowance and pension adjustment benefits. If the retirant dies before full repayment of the amount required, the remaining balance shall be deducted from any death benefits payable on behalf of the retirant.

3. Section 30 of P.L.1967, c.250 (C.43:16A-15.2) is amended to read as follows:

C.43:16A-15.2 Periodic benefits payable under Workers' Compensation Law; salary deductions paid by employer; retirement benefits application.

30. a. If any member of the retirement system receives periodic benefits payable under the Workers' Compensation Law during the course of his active service, in lieu of his normal compensation, his regular salary deductions shall be paid to the retirement system by his employer. Such payments shall be computed, in accordance with section 15 of P.L.1944, c.255 (C.43:16A-15), at the rate of contribution on the base salary subject to the retirement system, just prior to the receipt of the workers' compensation benefits. The moneys paid by the employer shall be credited to the member's account in the annuity savings fund and shall be treated as employee contributions for all purposes. The employer will terminate the payment of these moneys when the periodic benefits payable under the Workers' Compensation Law are terminated or when the member retires.

The member for whom the employer is making such payments, will be considered as if he were in the active service.

b. An application for retirement benefits may be approved by the board of trustees while the member, applying for such benefits, is in receipt of periodic benefits under the Workers' Compensation Law. If a retirant receiving an accidental disability

retirement allowance becomes a recipient of periodic benefits under the workers' compensation law after the date of retirement, the pension portion of the retirement allowance payable to the retirant shall be reduced, during the period of the payment of the periodic benefits, dollar-for-dollar in the amount of the periodic benefits received after the date of retirement, subject to the provisions of section 19 of P.L.1971, c.175 (C.43:16A-12.4). The reduction provided for herein shall not affect the retirant's pension adjustment benefits or survivor benefits that may be payable upon the death of the retirant.

If an accidental disability retirant receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any period of time after the date of retirement, the retirant shall repay to the retirement system the amount of the pension portion of the retirement allowance which should have been subject to reduction under this subsection. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retirant's retirement allowance and pension adjustment benefits. If the retirant dies before full repayment of the amount required, the remaining balance shall be deducted from any death benefits payable on behalf of the retirant.

4. Section 30 of P.L.1971, c.181 (C.53:5A-38.1) is amended to read as follows:

C.53:5A-38.1 Periodic benefits payable under Workers' Compensation Law; salary deductions paid by employer; retirement benefits application.

30. a. If any member of the retirement system receives periodic benefits payable under the Workers' Compensation Law during the course of his active service, in lieu of his normal compensation, his regular salary deductions shall be paid to the retirement system by his employer. Such payments shall be computed, in accordance with section 38 of P.L.1965, c.89 (C.53:5A-38), at the rate of contribution on the base salary subject to the retirement system, just prior to the receipt of the workers' compensation benefits. The moneys paid by the employer shall be credited to the member's account in the annuity savings fund and shall be treated as employee contributions for all purposes. The employer will terminate the payment of these moneys when the periodic benefits payable under the Workers' Compensation Law are terminated or when the member retires.

The member for whom the employer is making such payments, will be considered as if he were in the active service.

b. An application for retirement benefits may be approved by the board of trustees while the member, applying for such benefits, is in receipt of periodic benefits under the Workers' Compensation Law. If a retirant receiving an accidental disability retirement allowance becomes a recipient of periodic benefits under the workers' compensation law after the date of retirement, the pension portion of the retirement allowance payable to the retirant shall be reduced, during the period of the payment of the periodic benefits, dollar-for-dollar in the amount of the periodic benefits received after the date of retirement, subject to the provisions of section 31 of P.L.1971, c.181 (C.53:5A-15.3). The reduction provided for herein shall not affect the retirant's pension adjustment benefits or survivor benefits that may be payable upon the death of the retirant.

If an accidental disability retirant receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any period of time after the date of retirement, the retirant shall repay to the retirement system the amount of the pension portion of the retirement allowance which should have been subject to reduction under this subsection. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retirant's retirement allowance and pension adjustment benefits. If the retirant dies before full repayment of the amount required, the remaining balance shall be deducted from any death benefits payable on behalf of the retirant.

5. 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 and 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, 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.).

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 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.

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 commis-

sioners 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 section 34:15-74 of this chapter, 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.

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.

6. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 370

AN ACT concerning commercial shooting preserves and amending R.S.23:3-29 and R.S.23:3-32.

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

1. R.S.23:3-28 is amended to read as follows:

Definitions.

23:3-28. As used in sections 23:3-29 to 23:3-39 of this Title:

a. A wholly enclosed area means an area of land the boundaries of which are surrounded by a fence at least six feet in height, constructed of a woven wire not larger than two-inch mesh for game birds and at least eight feet in height for quadrupeds.

b. Propagating in a semiwild state means propagating on land the boundaries of which are clearly defined by a fence, road, ditch, wire, water or highway, and posted at intervals of not more than 500 feet with signs to be prescribed by the division.

c. A commercial pheasant, mallard, quail and partridge-shooting preserve shall mean land, the boundaries of which shall be clearly defined by posting at intervals of not more than 200 feet with signs to be prescribed by the Division of Fish, Game and Wildlife, and which is a minimum of 50 acres in size excluding safety zones as prescribed in subsection d. of R.S.23:4-16.

d. "Pheasant" means the species Phasianus colchicus, commonly known as English Ringneck, Melanistic Mutant, Mongolian, Formosan, Chinese or artificially propagated variety thereof.

e. "Partridge" means the species Perdix perdix, commonly known as Hungarian partridge and the species Alectoris chukar, commonly known as Chukar partridge.

f. "Quail" means the species Colinus virginianus, commonly known as the "bobwhite quail."

g. "Mallard" means the species Anas platyrhynchos, commonly known as "mallard," that has been captive bred in conformance with the appropriate federal regulation.

2. R.S.23:3-29 is amended to read as follows:

Licenses.

23:3-29. A person desiring to engage in the business of raising and selling game birds or game animals, or both, in a wholly

enclosed area of which he is the owner or lessee, or to have in captivity game birds or game animals, shall apply in writing to the division for a license to do so. The license fee shall be $5.00 per annum for each of the above purposes.

A person desiring to propagate pheasant, partridge, or quail, or any of them, in a semiwild state on lands of which he is the owner or lessee, shall apply in writing to the division for a license to do so. The license fee shall be $50.00 per annum. No two or more noncontiguous tracts of land shall be covered under the same license.

The division, when it appears that the application is made in good faith, and is in the public interest, may, upon the payment of the fee for each license, issue to the applicant such of the following license or licenses as may be applied for:

a. Propagating license permitting the licensee to propagate game birds or game animals, or both, in the wholly enclosed area, the location of which is stated in the license and the application therefor, and to sell such propagated game birds or game animals, or both, and ship them from the State alive at any time and to kill the same and sell the carcasses for food subject to the conditions prescribed by R.S.23:3-28 to 23:3-39, inclusive;

b. License to propagate pheasant, partridge, or quail, or any of them, in a semiwild state on lands of which the applicant is the owner or lessee, when the applicant shall have produced evidence satisfactory to the division that he will raise, or purchase for liberation, and liberate on the semiwild preserve at least one pheasant, quail, partridge or combination thereof for each acre of land to be licensed or at least 200 pheasant, quail or partridge or combination thereof between November 1 of the year for which the license is issued and the following February 28;

c. License to keep game birds and animals in captivity; or

d. License to operate a "commercial pheasant, mallard, quail and partridge-shooting preserve," as defined pursuant to R.S.23:3-28, on lands owned or leased by the applicant, who shall apply in writing to the division for a license to do so. The license fee shall be $200.00 per annum for the first tract of land and $165 per annum for each additional tract of land, each of which shall be at least 50 acres in size, and the form of the application and license shall be determined by the division. Two or more noncontiguous tracts of land owned or leased, or operated as a commercial pheasant, mallard, quail and partridge-shooting preserve by the same person shall be covered under the same license.

The division may, upon payment of the fee, issue to the applicant such a license when it appears that:

(1) The operation of such shooting preserve shall not conflict with a prior reasonable public interest; and

(2) The applicant shall have produced evidence satisfactory to the division that he will raise or purchase for liberation and liberate on the shooting preserve a total of at least 500 pheasant, mallard, quail and partridge or combination thereof between September 1 of the year for which the license was issued and the following May 1.

e. The fees for licenses set forth in this section may be adjusted by the Fish and Game Council pursuant to section 12 of P.L.1982, c.180 (C.23:3-1a).

f. The division shall coordinate the dates of issuance and renewal of the licenses to propagate game birds with the dates of issuance and renewal of licenses to operate commercial pheasant, mallard, quail and partridge-shooting preserves, and to the extent practicable, shall issue and renew these licenses under one license.

3. R.S.23:3-31 is amended to read as follows:

Killing game; sale; conditions; license required.

23:3-31. Game birds or animals bred or raised in the wholly enclosed area may be killed in any manner other than shooting, except in the case of deer, which may be killed by shooting, at any time and the carcasses sold for food. No such game birds or animals shall be sold for food unless the carcass of each bird or animal shall have been tagged with a suitable tag or seal supplied by the division. Nothing in sections 23:3-28 to 23:3-39 of this title, shall alter or supersede the laws requiring a license to hunt.

4. R.S.23:3-32 is amended to read as follows:

Pheasants, partridge, quail; killing, shipping, commercial shooting preserve license, conditions.

23:3-32. No pheasants, partridge or quail propagated in a semiwild state shall be sold. No such pheasants, partridge or quail shall be taken, possessed or transported unless each bird shall have been tagged with the special tag prescribed by R.S.23:3-28 to 23:3-39. No licensee raising pheasants, partridge or quail in a semiwild state shall procure from the division during any year of operation more tags to be affixed to the dead bodies of pheasants, partridge or quail propagated in a semiwild state than the number of pheasants, partridge or quail to be liberated, between Novem-

ber 1 and February 28. The tags shall be of a special kind provided for the purpose and shall be allocated by species and number of game birds liberated. The number of birds taken in any year, either alive or dead, on lands on which pheasants, partridge or quail are propagated in a semiwild state shall not exceed the number of tags obtained for each species from the division. Pheasants, quail and partridge propagated in a semiwild state may be taken by shooting only from 9:00 a.m. on November 10 or such opening date as may otherwise be prescribed by the State Fish and Game Code, to February 28 of the following year, unless otherwise prescribed by such code. R.S.23:4-24 relating to hunting on Sunday shall not apply to any person authorized to shoot pheasants, quail, and partridge under R.S.23:3-28 to 23:3-39. No pheasants, partridge or quail propagated in a semiwild state shall be trapped without the written permission of the division.

Under a "commercial pheasant, mallard, quail and partridge-shooting preserve" license, pheasants, mallard, quail and partridge may be taken by shooting only on lands described in the application and license, without regard to sex and daily bag limit, by fully licensed hunters authorized by the licensee to shoot on the land between September 1 and the following May 1, both dates inclusive and during any further period, not exceeding 31 days, which the commissioner may, from time to time, designate for that purpose upon the recommendation of the Director of the Division of Fish, Game and Wildlife.

No pheasants, mallard, quail or partridge shall be taken, possessed or transported, unless each bird shall have been tagged with a suitable tag or seal supplied by the division, and no licensee shall receive from the division, during any year of operation, more tags to be affixed to the bodies of pheasants, mallard, quail and partridge than one tag for each pheasant, mallard, quail and partridge liberated during the shooting period hereinbefore specified.

5. R.S.23:3-34 is amended to read as follows:

Tag fee; rules, regulations.

23:3-34. a. Until the Fish and Game Council has adopted the rules and regulations establishing a schedule of fees as required by subsection b. of this section, the division shall receive and collect $0.15 for each tag or seal affixed to the carcass of an animal or bird, as provided in R.S.23:3-28 through 23:3-39, inclusive.

These tags or seals shall remain affixed until the carcasses of the birds or animals are finally prepared for consumption, and the sale of a portion of a bird or animal which shall not at the time have affixed thereto the tag or seal shall constitute a violation of said sections 23:3-28 through 23:3-39. The keeper of a hotel, restaurant or boarding house, a retail dealer in meat, or a club may sell a portion of a bird or animal so tagged to a guest, customer or member for consumption.

b. The Fish and Game Council shall adopt rules and regulations establishing a schedule of tag and seal fees for the animals and birds subject to the provisions of R.S.23:3-28 through 23:3-39, inclusive.

6. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 371

AN ACT concerning the duration of certain public contracts, and amending P.L.1971, c.198.

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

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

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

15. All purchases, contracts or agreements for the performing of work or the furnishing of materials, supplies or services shall be made for a period not to exceed 12 consecutive months, except that contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) Fuel for heating purposes, for any term not exceeding in the aggregate, two years;

(b) Fuel or oil for use of airplanes, automobiles, motor vehicles or equipment for any term not exceeding in the aggregate, two years;

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public

Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment, P.L.1977, c.53.)

(3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than three years;

(6) Insurance, for any term of not more than three years;

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

(8) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utilities for a term not exceeding five years;

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

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

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

(12) The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations promulgated by the Department of Environmental Protection establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

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

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except for those contracts otherwise exempted pursuant to subsection (30), (31), (34) or (35) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the col-

lection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

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

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

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise exempted pursuant to subsection (36) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of materials or services for the purpose of lighting public streets, for a term not to exceed five years, provided that the rates, fares, tariffs or charges for the supplying of electricity for that purpose are approved by the Board of Public Utilities;

(21) In the case of a contracting unit which is a county or municipality, the provision of emergency medical services by a hospital to residents of a municipality or county as appropriate for a term not to exceed five years;

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

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

(24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a public utility company subject to the jurisdiction of the Board of Public Utilities, a similar regulatory body of another state, or a federal regulatory agency, or from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C. §796, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24,1991, for a term not to exceed 40 years;

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

(26) Claims administration services, for any term not to exceed three years;

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

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

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

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement

entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is entered into no later than January 7, 1995, for any term of not more than forty years;

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

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

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

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

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

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

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

All multiyear leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35) or (37) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36) or (37) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 372

AN ACT concerning payments from multiple-party accounts and amending P.L.1979, c.491.

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

1. Section 8 of P.L.1979, c.491 (C.17:16I-8) is amended to read as follows:

C.17:16I-8 Multiple-party accounts; payments; notice.

8. Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. The following payments from a multiple-party account by the financial institution, including payment of the entire account balance, are deemed authorized by all parties to, and any other person with an interest in, the multiple-party account, without any duty on the part of the financial institution to consider the net contributions of the parties to the account:

a. Payments, on request, to any one or more of the parties;

b. Payments pursuant to any statutory or common law right of set off, levy, attachment or other valid legal process or court order, relating to the interest of any one or more of the parties; and

c. Payments, on request, to a trustee in bankruptcy, receiver in any state or federal insolvency proceeding, or other duly authorized insolvency representative of any one or more of the parties.

A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

Notice that the entire account balance is subject to subsections b. and c. of this section shall be given to the parties by the financial institution, either in the account agreement or by separate document, in the manner the Commissioner of Banking may direct by regulation. Any account for which notice is not given shall not be subject to the terms of subsection b. or c. of this section.

2. This act shall take effect immediately and shall apply to all multiple-party accounts opened on or after the effective date of this act upon provision of the notice required pursuant to section 1 of this act. This act shall apply to all multiple-party accounts opened prior to the effective date of this act on the 90th day after the notice required pursuant to section 1 of this act is provided to the parties to the account.

Approved January 5, 1996.

CHAPTER 373

AN ACT concerning the sale and warranty of certain used motor vehicles 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.56:8-67 Definitions relative to sale and warranty of certain used vehicles.

1. As used in this act:

"As is" means a used motor vehicle sold by a dealer to a consumer without any warranty, either express or implied, and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

"Consumer" means the purchaser or prospective purchaser, other than for the purpose of resale, of a used motor vehicle normally used for personal, family or household purposes.

"Covered item" means and includes the following components of a used motor vehicle: Engine - all internal lubricated parts, timing chains, gears and cover, timing belt, pulleys and cover, oil pump and gears, water pump, valve covers, oil pan, manifolds, flywheel, harmonic balancer, engine mounts, seals and gaskets, and turbo-charger housing; however, housing, engine block and cylinder heads are covered items only if damaged by the failure of an internal lubricated part. Transmission Automatic/Transfer Case - all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets. Transmission Manual/Transfer Case - all internal lubricated parts, transmission mounts, seals and gaskets, but excluding a manual clutch, pressure plate, throw-out bearings, clutch master or slave cylinders. Front-Wheel Drive - all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets, Rear-Wheel Drive - all internal lubricated parts, propeller shafts, supports and U-joints, axle shafts and bearings, seals and gaskets.

"Dealer" means any person or business which sells or offers for sale a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period.

"Deduction for personal use" means the mileage allowance set by the federal Internal Revenue Service for business usage of a motor vehicle in effect on the date a used motor vehicle is repurchased by a dealer in accordance with section 5 of this act, multiplied by the total number of miles a used motor vehicle is

driven by a consumer from the date of purchase of that vehicle until the time of its repurchase.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Excessive wear and tear" means wear or damage to a used motor vehicle beyond that expected to be incurred in normal circumstances.

"Material defect" means a malfunction of a used motor vehicle, subject to a warranty, which substantially impairs its use, value or safety.

"Repair insurance" means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specified mileage and provided at an extra charge beyond the price of the used motor vehicle.

"Service contract" means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specific mileage or provided at an extra charge beyond the price of the used motor vehicle.

"Used motor vehicle" means a passenger motor vehicle, excluding motorcycles, motor homes and off-road vehicles, title to, or possession of which has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to become what is commonly known as "secondhand," within the ordinary meaning thereof.

"Warranty" means any undertaking, in writing and in connection with the sale by a dealer of a used motor vehicle, to refund, repair, replace, maintain or take other action with respect to the used motor vehicle, and which is provided at no extra charge beyond the price of the used motor vehicle.

C.56:8-68 Unlawful practices.

2. It shall be an unlawful practice for a dealer:

a. To misrepresent the mechanical condition of a used motor vehicle;

b. To fail to disclose, prior to sale, any material defect in the mechanical condition of the used motor vehicle which is known to the dealer;

c. To represent that a used motor vehicle, or any component thereof, is free from material defects in mechanical condition at the time of sale, unless the dealer has a reasonable basis for this representation at the time it is made;

d. To fail to disclose, prior to sale, the existence and terms of any written warranty, service contract or repair insurance currently in

effect on a used motor vehicle provided by a person other than the dealer, and subject to transfer to a consumer, if known to the dealer;

e. To misrepresent the terms of any written warranty, service contract or repair insurance currently in effect on a used motor vehicle provided by a person other than the dealer, and subject to transfer to a consumer;

f. To fail to disclose, prior to sale, the existence and terms of any written warranty, service contract or repair insurance offered by the dealer in connection with the sale of a used motor vehicle;

g. To misrepresent the terms of any warranty, service contract or repair insurance offered by the dealer in connection with the sale of a used motor vehicle;

h. To represent, prior to sale, that a used motor vehicle is sold with a warranty, service contract or repair insurance when the vehicle is sold without any warranty, service contract or repair insurance;

i. To fail to disclose, prior to sale, that a used motor vehicle is sold without any warranty, service contract, or repair insurance; and

j. To fail to provide a clear written explanation, prior to sale, of what is meant by the term "as is," if the used motor vehicle is sold "as is."

C.56:8-69 Written warranty required; minimum durations.

3. It shall be an unlawful practice for a dealer to sell a used motor vehicle to a consumer without giving the consumer a written warranty which shall at least have the following minimum durations:

a. If the used motor vehicle has 24,000 miles or less, the warranty shall be, at a minimum, 90 days or 3,000 miles, whichever comes first;

b. If the used motor vehicle has more than 24,000 miles but less than 60,000 miles, the warranty shall be, at a minimum, 60 days or 2,000 miles, whichever comes first; or

c. If the used motor vehicle has 60,000 miles or more, the warranty shall be, at a minimum, 30 days or 1,000 miles, whichever comes first, except that a consumer may waive his right to a warranty as provided under section 7 of this act.

C.56:8-70 Written warranty; requirements of dealer.

4. The written warranty shall require the dealer, upon failure or malfunction of a covered item during the term of the warranty, to correct the malfunction or defect, provided the used motor vehicle is delivered to the dealer, at his regular place of business, and subject to a deductible amount of $50 to be paid by the consumer for each repair of a covered item. This written warranty shall exclude repairs covered by any manufacturer's warranty, or

recall program, as well as repairs of a covered item required because of collision, abuse, or the consumer's failure to properly maintain such used motor vehicle in accordance with the manufacturer's recommended maintenance schedule, or from damage of a covered item caused as a result of any commercial use of the used motor vehicle, or operation of such vehicle without proper lubrication or coolant, or as a result of any misuse, negligence or alteration of such vehicle by someone other than the dealer.

C.56:8-71 Dealer's failure to correct defect.

5. a. If, within the periods specified in section 3 of this act, the dealer or his agent fails to correct a material defect of the used motor vehicle, after a reasonable opportunity to repair the used motor vehicle, the dealer shall repurchase the used motor vehicle and refund to the consumer the full purchase price, excluding all sales taxes, title and registration fees, or any similar governmental charges, and less a reasonable allowance for excessive wear and tear and less a deduction for personal use of such vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests appear on the records of ownership kept by the Director of the Division of Motor Vehicles.

b. It shall be an affirmative defense to any claim under this section that:

(1) The alleged material defect does not substantially impair the use, value or safety of the used motor vehicle; or

(2) The material defect is the result of abuse, neglect or unauthorized modification or alteration of the used motor vehicle by anyone other than the dealer or his agent.

c. It shall be presumed that a dealer has a reasonable opportunity to correct or repair a material defect in a used motor vehicle, if:

(1) The same material defect has been subject to repair three or more times by the dealer or his agent within the warranty period, but the material defect continues to exist; or

(2) The used motor vehicle is out of service by reason of waiting for the dealer to begin or complete repair of the material defect for a cumulative total of 20 or more days during the warranty period.

C.56:8-72 Term of warranty extended for repairs.

6. The term of any written warranty offered by a dealer in connection with the sale of a used motor vehicle shall be extended by any time period during which the used motor vehicle is waiting for the dealer or his agent to begin or complete repairs of a material defect of the used motor vehicle.

C.56:8-73 Waiver of dealer's obligation to provide warranty.

7. Notwithstanding any provision of this act to the contrary, a consumer, as a result of a price negotiation for the purchase of a used motor vehicle with over 60,000 miles, may elect to waive the dealer's obligation to provide a warranty on the used motor vehicle. The waiver shall be in writing and separately stated in the agreement of retail sale or in an attachment thereto and separately signed by the consumer. The waiver shall state the dealer's obligation to provide a warranty on used motor vehicles offered for sale, as set forth in sections 3 and 4 of this act. The waiver shall indicate that the consumer, having negotiated the purchase price of the used motor vehicle and obtained a price adjustment, is electing to waive the dealer's obligation to provide a warranty on the used motor vehicle and is buying the used motor vehicle "as is."

C.56:8-74 Warranty given as a matter of law.

8. If a dealer fails to give a written warranty required by this act, the dealer nevertheless shall be deemed to have given the warranty as a matter of law, unless a waiver has been signed by the consumer in accordance with section 7 of this act.

C.56:8-75 Remedies, rights preserved.

9. Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

C.56:8-76 Nonapplicability of act.

10. The provisions of sections 3, 4, and 5 shall not apply to: any used motor vehicle sold for less than $3,000; any used motor vehicle over seven or more model years old; any used motor vehicle which has been declared a total loss by an insurance company and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle has been declared a total loss by an insurance company; or, any used motor vehicle with more than 100,000 miles.

C.56:8-77 Bond to assure compliance.

11. To assure compliance with the requirements of this act, a dealer shall provide a bond in favor of the State of New Jersey in the amount of $10,000, executed by a surety company authorized to transact business in the State of New Jersey by the Department of Insurance and to be conditioned on the faithful performance of the provisions of this act. This bond shall be for the term of 12 months and shall be renewed at each expiration for a similar period. The Director of the Division of Motor Vehicles shall not issue a deal-

er's license and shall not renew a license of any dealer who has not furnished proof of the existence of the bond required by this act.

C.56:8-78 Rules, regulations.

12. The Director shall adopt 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.56:8-79 Consumer awareness program required.

13. The director shall implement a consumer awareness program which shall advise consumers of the requirements, protections and benefits provided by this act, within 120 days following enactment of this act.

C.56:8-80 Administrative fee established.

14. The director may establish an administrative fee, to be paid by the consumer, in order to implement the provisions of this act, which fee shall be fixed at a level not to exceed the cost for the administration and enforcement of this act.

15. This act shall take effect on the 180th day following enactment and shall apply to used motor vehicles sold on or after that date.

Approved January 5, 1996.

CHAPTER 374

AN ACT concerning the investments of certain joint self-insurance funds and amending P.L.1983, c.372 and P.L.1992, c.53.

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

1. Section 3 of P.L.1983, c.372 (C.40A:10-38) is amended to read as follows:

C.40A:10-38 Powers, authority.

3. a. The commissioners of a joint insurance fund shall have the powers and authority granted to commissioners of individual local insurance funds under the provisions of subsections a., b., c., and e. of N.J.S.40A:10-10.

b. The commissioners may invest and reinvest the funds, including workers' compensation funds, as authorized under the provisions of subsection b. of N.J.S.40A:10-10. The commissioners may, subject to the cash management plan of the joint insurance fund adopted pursuant to N.J.S.40A:5-14, delegate any of the functions, powers and duties relating to the investment and reinvestment of these funds, including the purchase, sale or exchange of any investments, securities or funds to an investment or asset manager. Any transfer of investment power and duties made pursuant to this subsection shall be detailed in a written contract for services between the joint insurance fund and an investment or asset manager. The contract shall be filed with the Commissioner of Insurance and the Commissioner of Community Affairs. Compensation under such an arrangement shall not be based upon commissions related to the purchase, sale or exchange of any investments, securities or funds.

c. The commissioners may transfer moneys held in the fund to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the fund, pursuant to the written directions of the commissioners, signed by an authorized officer of the joint insurance fund, or any investment or asset manager designated by them. The commissioners shall provide a written notice to the director detailing the extent of the authority delegated to the investment or asset manager so designated to act on behalf of the joint insurance fund. Moneys transferred to the director for investment shall be invested subject to section 8 of P.L.1977, c.396 (C.40A:5-15.1), and in accordance with the standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. In addition to the types of securities in which the joint insurance fund may invest pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1), a joint insurance fund may invest in debt obligations of federal agencies or government corporations with maturities not to exceed 10 years from the date of purchase, excluding mortgage backed or derivative obligations, provided that the investments are purchased through the Division of Investment and are invested consistent with the rules and regulations of the State Investment Council.

d. Moneys transferred to the director for investment may not thereafter be withdrawn except: (1) pursuant to the written directions of the commissioners signed by an authorized officer of the joint insurance fund, or any investment or asset manager designated by them; (2) upon withdrawal or expulsion of a member local unit from the fund; (3) termination of the fund; or (4) in

specific amounts in payment of specific claims, administrative expenses or member dividends upon affidavit of the director or other chief executive officer of the joint insurance fund.

e. The commissioners or the executive board, as the case may be, of any joint insurance fund established pursuant to the provisions of this act shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.40A:5-1 et seq.), the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and such other rules and regulations as govern the custody, investment and expenditure of public funds by local units.

2. Section 3 of P.L.1992, c.53 (C.52:18A-86.1) is amended to read as follows:

C.52:18A-86.1 Acceptance, investment of moneys.

3. The Director of the Division of Investment is authorized to accept, for purposes of investment, moneys from any joint self-insurance fund established by any school board insurance group pursuant to P.L.1983, c.108 (C.18A:18B-1 et seq.) and moneys from any joint insurance fund established by two or more units of local government, including contracting units, pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.). All moneys accepted by the director pursuant to this section shall be invested on behalf of the funds in accordance with the standards governing the investment of other funds managed under the rules and regulations of the State Investment Council. Moneys accepted by the director pursuant to subsection c. of section 3 of P.L.1983, c. 372 (C.40A:10-38) may be invested and reinvested pursuant to the written directions of the commissioners, signed by an authorized officer of the joint insurance fund, or any investment or asset manager designated by them. The commissioners shall provide a written notice to the director detailing the extent of the authority delegated to the investment or asset manager so designated to act on behalf of the joint insurance fund.

3. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 375

AN ACT to permit foreign professional legal corporations to transact business in New Jersey and amending P.L.1969, c.232.

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

1. Section 3 of P.L.1969, c.232 (C.14A:17-3) is amended to read as follows:

C.14A:17-3 Terms defined.

3. Terms defined. As used in this act, the following words shall have the meanings indicated:

(1) "Professional service" shall mean any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this act and by reason of law could not be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, veterinarians and, subject to the Rules of the Supreme Court, attorneys-at-law;

(2) "Professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within this State to render such professional service;

(3) "Closely allied professional service" means and is limited to the practice of (a) architecture, professional engineering, land surveying and land planning and (b) any branch of medicine and surgery, optometry, physical therapy, registered professional nursing, and dentistry;

(4) "Domestic professional legal corporation" means a professional corporation incorporated under P.L.1969, c.232 (C.14A:17-1 et seq.) for the sole purpose of rendering legal services of the type provided by attorneys-at-law;

(5) "Foreign professional legal corporation" means a corporation incorporated under the laws of another state for the purpose of rendering legal services of the type provided by attorneys-at-law.

2. Section 5 of P.L.1969, c.232 (C.14A:17-5) is amended to read as follows:

C.14A:17-5 Professional corporation and foreign professional legal corporation.

5. Professional corporation and foreign professional legal corporation.

(a) One or more persons, each of whom is duly licensed or otherwise legally authorized to render the same or closely allied professional service within this State, may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of the Business Corporation Act of New Jersey (Title 14A, Corporations, General, of the New Jersey Statutes), for the sole and specific purpose of rendering such professional service.

(b) A foreign professional legal corporation may render legal services of the type provided by attorneys-at-law in this State provided by that it secures a certificate of authority from the Secretary of State in accordance with Chapter 13 of the Business Corporation Act of New Jersey (Title 14A, Corporations, General, of the New Jersey Statutes) and provided further that every shareholder or employee of the foreign professional legal corporation providing legal services in this State is an attorney-at-law licensed and eligible to practice in this State under the Rules of the Supreme Court.

3. Section 7 of P.L.1969, c.232 (C.14A:17-7) is amended to read as follows:

C.14A:17-7 Rendering of professional service limited to licensed personnel; charges authorized.

7. Rendering of professional service limited to licensed personnel; charges authorized.

No professional corporation or foreign professional legal corporation may render professional services in this State except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this State; provided, however, that this provision shall not be interpreted to include in the term "employee" as used herein clerks, secretaries, administrators, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by law, custom and practice to be rendering professional service to the public for which a license or other legal authorization is required in connection with the profession to be practiced, nor does the term "employee" include any other person who performs all his employment under the direct supervision

and control of an officer, agent or employee who is himself rendering professional service to the public on behalf of the professional corporation; provided, that no person shall, under the guise of employment, practice a profession unless duly licensed to practice that profession under the laws of this State. Notwithstanding any other or contrary provisions of the laws of the State, a professional corporation or foreign professional legal corporation may charge for its services, may collect such charges, and may compensate its officers, employees and agents, including those persons excluded from the term "employee" as used herein.

4. Section 8 of P.L.1969, c.232 (C.14A:17-8) is amended to read as follows:

C.14A:17-8 Professional relationship; personal liability; corporate liability.

8. Professional relationship; personal liability; corporate liability. Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this State applicable to the professional relationship and the contract, tort and other legal liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct, including the confidential relationship between the person rendering the professional services and the person receiving such professional service, if any; and all confidential relationships previously enjoyed under the laws of this State or hereafter enacted shall remain inviolate. Any officer, shareholder, agent or employee of a professional corporation or a foreign professional legal corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation in this State to the person for whom such professional service was being rendered; provided, that the personal liability of shareholders of a professional corporation, in their capacity as shareholders of such corporation, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under the provisions of the Business Corporation Act of New Jersey, exclusive of this act. The professional corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on

behalf of the corporation in the rendering of professional service. The assets of a professional corporation shall not be liable to attachment for the individual debts of its shareholders. Notwithstanding the foregoing, the relationship of an individual to a professional corporation or a foreign professional legal corporation with which such individual is or may be associated, whether as shareholder, director, officer, employee or agent, shall in no way modify, extend or diminish the jurisdiction over such individual, of and by whatever State, agency, office or authority which licensed or otherwise legally authorized him to render service in a particular field of endeavor in this State.

5. Section 9 of P.L.1969, c.232 (C.14A:17-9) is amended to read as follows:

C.14A:17-9 Limitations on corporate business activity.

9. Limitations on corporate business activity.

No professional corporation shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; and no foreign professional legal corporation shall engage in any business in this State other than the rendering of legal services of the type provided by attorneys-at-law; provided, that nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for, or appropriate or desirable in, the fulfillment or rendering of its professional services.

6. Section 10 of P.L.1969, c.232 (C.14A:17-10) is amended to read as follows:

C.14A:17-10 Who may own shares; voting trust; estate ownership.

10. Who may own shares; voting trust; estate ownership.

(a) No professional corporation may issue any of its shares to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same professional service as that for which the corporation was incorporated. No shareholder of a professional corporation shall enter into a voting trust agreement or proxy or any other type of agreement vesting another person not a shareholder of the corporation with the authority to exercise the voting power of any or all of his shares. Subject to the provisions of the corporation's certificate of incorporation, the estate

of a deceased shareholder may continue to hold the shares of such shareholder for a reasonable period of administration of the estate, but shall not be authorized to participate in any decisions concerning the rendering of professional service.

(b) A foreign professional legal corporation rendering legal services in this State shall have at least one shareholder who is an attorney-at-law licensed and eligible to practice in this State under the Rules of the Supreme Court.

7. Section 15 of P.L.1969, c.232 (C.14A:17-15) is amended to read as follows:

C.14A:17-15 Applicable law; consolidation, merger; report, contents.

15. Applicable law; consolidation, merger; report, contents. The Business Corporation Act of New Jersey shall be applicable to a professional corporation and to a foreign professional legal corporation except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of the Business Corporation Act of New Jersey, and in such event the provisions and sections of this act shall take precedence with respect to a professional corporation and a foreign professional legal corporation. Except for a domestic professional legal corporation, a professional corporation organized under this act may consolidate or merge only with another professional corporation organized under this act and empowered to render the same professional service. A merger or consolidation with any foreign corporation is prohibited. A domestic professional legal corporation may consolidate or merge either with another domestic professional legal corporation or with a foreign professional legal corporation provided that the registration requirements of this act and the Rules of the Supreme Court are complied with. A professional corporation shall annually furnish a report to the office of the Secretary of State on a date designated by the Secretary of State showing the names and post-office addresses of all its shareholders, directors and officers, which shall certify that, with the exception permitted in section 6, all such persons are duly licensed or otherwise legally authorized to render the same professional service in this State. A foreign professional legal corporation shall annually furnish a report to the office of the Secretary of State on a date designated by the Secretary of State showing the names and post-office addresses of all its shareholders, directors and officers, and shall certify that the foreign

professional legal corporation is authorized to render legal services of the type provided by attorneys-at-law in its state of incorporation and further certify that the shareholders and employees providing such services in this State are attorneys-at-law licensed and eligible to practice in this State. This report shall be made on forms prescribed and furnished by the Secretary of State, but shall contain no information except that expressly called for by this section. It shall be signed by the president or vice-president and the secretary or an assistant secretary of the corporation, and acknowledged by the persons signing the report before a notary public or other officer duly authorized to administer oaths, shall be filed in the office of the Secretary of State, and shall be in lieu of the regular annual report of corporations otherwise required by the Business Corporation Act of New Jersey.

8. This act shall take effect on the 120th day following enactment.

Approved January 5, 1996.

CHAPTER 376

AN ACT concerning consolidation of sparsely populated municipalities and supplementing chapter 43 of Title 40 of the Revised Statutes.

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

C.40:43-66.78 Findings, declarations relative to consolidation of sparsely populated municipalities.

1. The Legislature finds and declares that the consolidation of sparsely populated municipalities into contiguous municipalities having larger populations should be encouraged as a means to reduce the costs of local government. The Legislature also finds that there should be a simplified consolidation process when a municipality seeking consolidation is sparsely populated and when the resulting consolidated municipality will have the same form of government as the municipality absorbing the sparsely populated municipality.

C.40:43-66.79 Definitions.

2. For the purposes of this act:

"Absorbing municipality" means a municipality into which a contiguous sparsely populated municipality situate in the same county intends to be consolidated pursuant to the provisions of P.L.1995, c.376 (C.40:43-66.78 et seq.).

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Consolidated municipality" means the single new municipality that results from an affirmative consolidation effort pursuant to the provisions of P.L.1995, c.376 (C.40:43-66.78 et seq.).

"Sparsely populated municipality" means a municipality with a population of less than 500 persons according to the most recent federal decennial census.

C.40:43-66.80 Ordinance proposing municipality's consolidation; consent.

3. a. The governing body of a sparsely populated municipality may adopt, by two-thirds vote of its full membership, an ordinance proposing the municipality's consolidation into a contiguous municipality.

b. The clerk of a municipality that adopts an ordinance pursuant to subsection a. of this section shall forward a copy of the ordinance to the governing body of the absorbing municipality and to the director within seven days of the effective date of the ordinance.

c. If the governing body of the absorbing municipality consents to the consolidation it shall, within 120 days after receipt of the ordinance adopted by the governing body of the sparsely populated municipality pursuant to subsection a. of this section, adopt an ordinance consenting to consolidation with the sparsely populated municipality by a two-thirds vote of the full membership of the governing body and shall forward a copy of the ordinance to the director and the clerk of the sparsely populated municipality.

C.40:43-66.81 Question of consolidation submitted to voters.

4. a. Whenever the governing body of a sparsely populated municipality with a population between 100 and 500 persons according to the most recent federal decennial census and the governing body of an absorbing municipality have both adopted ordinances proposing and consenting to the consolidation of their respective municipalities, the municipal clerk of each municipality shall cause the question of consolidation to be submitted to the registered voters of each municipality on the date for the next general or regular municipal election occurring not less than 60 days after the adoption of the ordinance of the absorbing municipality. At that election, the question shall be submitted in the same manner as other public questions in each such municipality, and in the following form or such part thereof as shall be applicable:

"Shall (insert the names of the municipalities) be consolidated into a single municipality to be known as (insert name of absorbing municipality) and governed under (insert the present plan or form of government of the absorbing municipality)?"

b. The question submitted pursuant to subsection a of this section shall be deemed approved and adopted only if a majority of those voting on the question in each of the municipalities votes in favor of the question.

c. The results of the election in each municipality in which the question was submitted shall be certified in accordance with Title 19 of the Revised Statutes, and the county clerk shall, in turn, not more than five days after said certification, notify the director of the election results.

C.40:43-66.82 Meeting with mayors; timetable of consolidation.

5. a. Within 20 days of either: (1) receipt of an ordinance consenting to consolidation pursuant to subsection c. of section 3 of P.L.1995, c.376 (C.40:43-66.80), with regard to a consolidation involving a sparsely populated municipality with a population of less than 100 persons according to the most recent federal decennial census, or (2) the certification of the results of elections approving a consolidation pursuant to section 4 of P.L.1995, c.376 (C.40:43-66.81), the director shall meet with the mayors and such other municipal officials as the director shall require from the sparsely populated municipality and the absorbing municipality.

b. In consultation with the mayors the director shall establish a timetable for the consolidation to become effective and shall make such budget, financial and educational district adjustments as shall be required to complete the consolidation. The Commissioner of Education also shall be consulted with regard to the adjustment of educational district matters. The director shall also establish a timetable for the preparation of a new official map of the consolidated municipality showing the new boundaries.

c. The director, in consultation with the mayors, shall have all of the powers of a consolidation commission under the "Municipal Consolidation Act," P.L.1977, c.435 (C.40:43-66.35 et seq.).

C.40:43-66.83 Effects of consolidation.

6. a. The consolidated municipality shall continue the form of government and name of the absorbing municipality.

b. The clerk of the consolidated municipality shall notify the Secretary of State and the county clerk of the consolidation.

c. The offices and positions of the elected and appointed municipal officials of the sparsely populated municipality shall terminate upon the completion of the consolidation.

d. The elected and appointed officers of the absorbing municipality shall continue their terms of office or appointment upon creation of the consolidated municipality as if no consolidation had occurred and the ordinances of the absorbing municipality shall be applicable to the entire consolidated municipality.

C.40:43-66.84 Tuition, transportation costs of students on federal property.

7. In the event children in a consolidated municipality reside on federal property within the former boundaries of a sparsely populated municipality, the State shall assume fiscal responsibility for the tuition and transportation costs of such children. The Department of Education shall pay the tuition to the school district in which the children are enrolled and pay the transportation costs to the district in which the children reside.

8. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 377

AN ACT concerning participation in joint insurance funds by certain non-profit organizations and amending P.L.1987, c.431.

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

1. Section 3 of P.L.1987, c.431 (C.17:49A-3) is amended to read as follows:

C.17:49A-3 Definitions.

3. As used in this act:

a. "Board" means the board of trustees or the group of persons vested with management of the business and affairs of a nonprofit corporation regardless of the name by which the group or persons are designated.

b. "Keys amendment facility" means a medical or non-medical residential setting designated by the State as a facility that meets the requirements of the "Social Security Act," Pub.L. 93-233 (42 U.S.C. §1382e) as implemented by 45 CFR § 1397.1 et seq.

c. "Nonprofit corporation" means any corporation organized under the "New Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq., any corporation as defined by N.J.S.15A:1-2e or any corporation organized pursuant to Title 16 of the Revised Statutes.

d. "Owner" means the person or group vested with ownership and management of a Keys amendment facility regardless of the name by which the person or group is designated.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 378

AN ACT concerning the retirement of certain members of the Police and Firemen's Retirement System of New Jersey and supplementing P.L.1944, c.255 (C.43:16A-1 et seq.).

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

C.43:16A-9.5 Certain PFRS members deemed retirees at time of death.

1. Notwithstanding the provisions of paragraph b. of subsection (2) of section 9 of P.L.1944, c.255 (C.43:16A-9) to the contrary, a member of the Police and Firemen's Retirement System with at least 20 years of creditable service who is certified as terminally ill and who, within one month of that certification, becomes incapable mentally or physically of applying for ordinary disability retirement before death shall be deemed to be retired on the date of the member's death if, on or before the 60th day following that date of death or the effective date of this act, whichever is later, the surviving beneficiary makes that request in writing to the board. Upon approval by the board, the request shall become irrevocable, and the survivors of the member shall

receive all benefits due to survivors of an ordinary disability retiree of the retirement system.

2. This act shall take effect immediately and shall be retroactive to April 1, 1994.

Approved January 5, 1996.

CHAPTER 379

AN ACT concerning the construction of a sports stadium by the Delaware River and Bay Authority.

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

C.32:11E-1.5 Construction of sports stadium in North Wildwood authorized.

1. The Delaware River and Bay Authority is authorized to plan, finance, develop, construct, purchase, lease, maintain, operate, improve and otherwise effectuate a project, at a site located in the City of North Wildwood, Cape May County, consisting of a multi-purpose sports stadium and other buildings, structures, facilities, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to, the project, which in the judgment of the authority is required for the sound economic development of a multi-purpose sports stadium suitable for the holding of athletic games and other athletic contests or sporting events, exhibitions, spectacles, meetings, entertainment events or other expositions related to the purposes of the project.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 380

AN ACT concerning capital and surplus requirements for certain insurers and amending P.L.1993, c.235.

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

1. Section 2 of P.L.1993, c.235 (C.17B:18-68) is amended to read as follows:

C.17B:18-68 Surplus, capital required.

2. Except as provided by section 3 of P.L.1993, c.235 (C.17B:18-69), no domestic insurer shall commence business in this State unless the insurer has surplus and capital actually paid in cash of at least the following amounts, and no domestic insurer shall otherwise continue to transact business in this State unless it has surplus and capital of at least the following amounts:

a. For either kind or both kinds of business specified in N.J.S.17B:17-3 and N.J.S.17B:17-5, $1,000,000 in capital and $4,000,000 in surplus for a stock insurer, and $4,000,000 in surplus for a mutual insurer;

b. For the kind of business specified in N.J.S.17B:17-4, $700,000 in capital and $2,800,000 in surplus for a stock insurer, and $3,000,000 in surplus for a mutual insurer; and

c. For all three kinds of business specified in N.J.S.17B:17-3, N.J.S.17B:17-4 and N.J.S.17B:17-5, $1,530,000 in capital and $6,120,000 in surplus for a stock insurer, and $6,300,000 in surplus for a mutual insurer.

For purposes of this section, "surplus" means unencumbered assets in excess of capital and all required reserves and other liabilities.

2. This act shall take effect immediately.

Approved January 5, 1996.

CHAPTER 381

AN ACT concerning the organization of the General Assembly for the first annual session of the 207th Legislature.

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

1. Notwithstanding the provisions of Chapter 1 of Title 52 of the Revised Statutes to the contrary, on January 9, 1996 or as soon thereafter as is practicable, the General Assembly may meet and organize for the first annual session of the 207th Legislature at a suitable location on the campus of Trenton State College in Ewing Township, Mercer County.

2. This act shall take effect immediately and shall expire at the termination of the organizational session of the General Assembly.

Approved January 5, 1996.

CHAPTER 382

AN ACT concerning the designation of additional urban enterprise zones, amending and supplementing P.L.1983, c.303, and repealing section 30 of P.L.1983, c.303 (52:27H-89).

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

1. 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 27 enterprise zones shall be in effect at any one time. No more than one enterprise zone shall be designated in any one municipality. Any designation granted shall be for a period of 20 years and shall not be renewed at the end of that period. In designating enterprise zones the authority shall seek to avoid excessive geographic concentration of zones in any particular region of the State. At least six of the 10 additional enterprise zones authorized pursuant to 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.

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, is engaged in the active conduct of a trade or business in that zone; or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone and has at least 25% of its full-time employees employed at a business location in the zone, meeting one or more of the following criteria:

(1) Residents within the zone, within another zone or within a qualifying municipality; or

(2) Unemployed for at least six months prior to being hired and residing in New Jersey, and recipients of New Jersey public assistance programs for at least six months prior to being hired, or either of the aforesaid; or

(3) Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, Pub.L.97-300 (29 U.S.C.§1501 et seq.);

d. "Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of P.L.1983, c.303 (C.52:27H-73), an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate;

except that any municipality which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) shall qualify if its municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor. 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) and that municipality set forth in paragraph (7) of section 3 of P.L.1995, c.382 (C.52:27H-66.1) shall be deemed qualifying municipalities;

e. "Public assistance" means income maintenance funds administered by the Department of Human Services or by a county welfare agency;

f. "Zone development corporation" means a nonprofit corporation or association created or designated by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of P.L.1983, c.303 (C.52:27H-68) and to prepare, monitor, administer and implement the zone development plan;

g. "Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality;

h. "Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to this act; which is organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes; and which has for its principal purpose the encouragement and support of community activities within, or on behalf of, the zone so as to (1) stimulate economic activity, (2) increase or preserve residential amenities, or (3) otherwise encourage community cooperation in achieving the goals of the zone development plan; and

i. "Enterprise zone assistance fund" or "assistance fund" means the fund created by section 29 of P.L.1983, c.303 (C.52:27H-88).

C.52:27H-66.1 Additional zones authorized.

3. The additional seven zones authorized pursuant to P.L.1995, c.382 (C.52:27H-66.1 et al.) shall be designated within 90 days of the date of the submittal of an application and zone development plan. The authority shall accept applications within 90 days of the effective date of P.L.1995, c.382 (C.52:27H-66.1 et al.) for those zones that fulfill the criteria set forth in this section. Notwithstanding the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.) to the contrary, the seven additional enterprise zones to be designated by the authority pursuant to the criteria for priority consideration set forth in this section shall be entitled to an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The following criteria shall be utilized in according priority consideration for designation of the seven additional enterprise zones authorized pursuant to P.L.1995, c.382 (C.52:27H-66.1 et al.):

(1) One zone shall be located in a qualifying municipality with a population greater than 55,000 and less than 65,000 according to the latest federal decennial census in a county of the first class with a population density greater than 6,100 and less than 6,700 persons per square mile according to the latest federal decennial census provided that the qualifying municipality is contiguous to a municipality in which an enterprise zone is designated;

(2) One zone shall be located in a qualifying municipality with a population greater than 70,000 and less than 80,000 according to the latest federal decennial census;

(3) One zone shall be located in a qualifying municipality with a population greater than 38,000 and less than 39,500 according to the latest federal decennial census;

(4) One zone shall be located in a qualifying municipality with a population greater than 45,000 and less than 55,000 according to the latest federal decennial census;

(5) One zone shall be located in a qualifying municipality with a population greater than 21,000 and less than 22,000;

(6) One zone shall be located in a qualifying municipality with a population greater than 29,000 and less than 32,000 according to the latest federal decennial census; and

(7) One zone shall be located within a qualifying municipality having a population greater than 7,000 and less than 9,000 according to the latest federal decennial census in a county of the first class with a population greater than 550,000 and less than 560,000 according to the latest federal decennial census.

Repealer.

4. Section 30 of P.L.1983, c.303 (C.52:27H-89) is hereby repealed.

5. This act shall take effect on the first day of the third month following enactment, but the State Treasurer and the Commissioner of Commerce and Economic Development may take such anticipatory actions as may be necessary for the timely implementation of this act upon the effective date thereof.

Approved January 9, 1996.

CHAPTER 383

AN ACT to provide workers' compensation coverage for emergency management volunteers and amending R.S.34:15-43, R.S.34:15-74, R.S.34:15-75, R.S.34:15-76, N.J.S.59:1-3, and P.L.1952, c.12.

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 and every emergency management volunteer doing emergency management service for the State, 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.).

Benefits available under this section to emergency management volunteers 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, participant 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.), 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.

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. R.S.34:15-74 is amended to read as follows:

Compensation insurance provided for certain volunteers by municipality or county.

34:15-74. Except as otherwise provided in this section, the governing body of every municipality and the committee of every fire district shall provide compensation insurance for special, reserve or auxiliary policemen doing volunteer public police duty, for volunteer firemen doing public fire duty and volunteer first aid and emergency squad workers doing public first aid and rescue duty under the control or supervision of any commission, council or other governing body of the municipality or any board of fire commissioners of such municipality or of any fire district, and the board of chosen freeholders shall provide compensation insurance for county fire marshals and assistant county fire marshals, within the meaning of R.S.34:15-43. Such insurance shall provide compensation for every special, reserve or auxiliary policeman, and for every such fireman or authorized first aid or rescue squad worker or county fire marshal or assistant county fire marshal who shall be a member of any first aid or rescue squad created within the fire company of which he is a member or authorized first aid or rescue squad worker, or composed of members and authorized first aid or rescue squad workers of different fire companies in the same municipality for injuries received while acting in response to any call made upon such squad, for first aid or rescue work, whether such call be made because of a fire or otherwise.

The provisions of this section shall not require the governing body of any municipality or the committee of any fire district which contributes to the support of a volunteer fire company or volunteer first aid or rescue squad serving said municipality or district but located, or its headquarters maintained, without said municipality or district to provide compensation insurance for the members of said company or squad who are covered by compensation insurance carried by the municipality or district within which said company or squad is located, or its headquarters maintained, whenever evidence of such insurance coverage is supplied to or otherwise obtained by said governing body or committee, nor shall the provisions of this section require the governing body of any municipality or the committee of any fire district to provide compensation insurance whenever evidence that a fire company has obtained its own insurance coverage is provided to the governing body or committee.

Except as otherwise provided by this section, the governing body of a municipality or county shall provide compensation insurance for each emergency management volunteer registered with and doing emergency management service on behalf of that municipality or county pursuant to P.L.1942, c.251 (C.App. A:9-33 et seq.), unless the governing body provides workers' compensation coverage for each emergency management volunteer and has evidence of such coverage or the governing body has received or obtained proof that workers' compensation insurance coverage for each emergency management volunteer is provided by an emergency management council.

The provisions of this section shall not require the governing body of a municipality to pay for compensation insurance or make reimbursement of any portion of the expense of medical, surgical or hospital treatment for an emergency management volunteer, if that insurance or reimbursement is being furnished by the United States Government or any agent thereof.

3. 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, or emergency management volunteer doing emergency management service, shall 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.

4. N.J.S.59:1-3 is amended to read as follows:

Definitions.

59:1-3. Definitions. As used in this subtitle:

"Employee" includes an officer, employee, or servant, whether or not compensated or part-time, who is authorized to perform any act or service; provided, however, that the term does not include an independent contractor.

"Employment" includes office; position; employment; or service, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey, or as an emergency management volunteer.

"Enactment" includes a constitutional provision, statute, executive order, ordinance, resolution or regulation.

"Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that would be actionable if inflicted by a private person.

"Law" includes enactments and also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States.

"Public employee" means an employee of a public entity and includes a person participating, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey and any person retained by the public defender to serve as an arbitrator, mediator, or in such similar capacity. "Public employee" does not include any independent contractors or other individuals, agencies, or entities not established in or employed by the Office of the Public Defender designated to provide protection and advocacy services to indigent mental hospital admittees or persons with a developmental disability as the term is defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. "Public entity" does not include any independent contractors or other individuals, agencies, or entities not established in or employed by the Office of the Public Defender designated to provide protection and advocacy services to indigent mental hospital admittees or persons with a developmental disability as the term is defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

"State" shall mean the State and any office, department, division, bureau, board, commission or agency of the State, but shall not include any such entity which is statutorily authorized, to sue and be sued. "State" also means the Palisades Interstate Park Commission, but only with respect to employees, property and activities within the State of New Jersey.

"Statute" means an act adopted by the Legislature of this State or by the Congress of the United States.

5. R.S.34:15-76 is amended to read as follows:

Payments to certain volunteers.

34:15-76. All payments of compensation to volunteer firemen, county fire marshals, assistant county fire marshals, volunteer first aid or rescue squad workers, volunteer drivers of any municipally-owned or operated ambulance, special, reserve or auxiliary policemen doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, or emergency management volunteers doing emergency management service, shall be governed by and be subject to the provisions of this chapter. The premiums therefor shall be paid from the tax levy, and the insurance shall protect such persons from loss by reason of injury or death suffered while engaged in the performance of duty.

6. Section 2 of P.L.1952, c.12 (C.App. A:9-57.2) is amended to read as follows:

C.App. A:9-57.2 Benefits to civil defense volunteers.

2. Benefits, as provided in this act, shall be furnished to a civil defense volunteer for injury, as defined herein, arising before the effective date of P.L.1995, c.383, either within or without this State, provided:

(a) The injury is proximately caused by authorized civil defense service, and

(b) The injury is not caused by the gross negligence or intoxication of the injured civil defense volunteer, and

(c) The injury is not intentionally self-inflicted and is not due to willful exposure to radiation or to noxious gases or to germ warfare, and

(d) Medical treatment or hospital care is undergone by the civil defense volunteer because of the injury within 30 days of the date of injury, where objective symptoms are immediate, or within five months after the date when the civil defense volunteer shall have ceased to be subject to exposure to radiation or to noxious gases or to germ warfare, if the treatment or hospital care is required because of such exposure which did not produce objective symptoms immediately. This subsection shall not apply if death occurs immediately.

Claims for disability, death, medical and hospital benefits for civil defense volunteers, all of whom have been renamed "emergency management volunteers" by Executive Order No. 101 of 1980, which arise on or after the effective date of P.L.1995, c.383, shall be filed with and determined by the Division of Workers' Compensation in the Department of Labor in accordance with the provisions of articles 1, 2, 3, and 4 of chapter 15 of Title 34 of the Revised Statutes.

7. Section 15 of P.L.1952, c.12 (C.App. A:9-57.15) is amended to read as follows:

C.App. A:9-57.15 Special fund for civil defense volunteers.

15. There is hereby created a fund which shall be known as the special fund for civil defense volunteers to provide for the payment of weekly benefits for total disability, expenses of medical and hospital care and death benefits under this act and the expenses of administration. Such fund shall consist of any moneys appropriated therefor or credited thereto including any financial contributions received from the United States Government for such purposes. The State Treasurer shall be the custodian of this special fund. The State Treasurer may deposit any portion of the fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of State funds by him. Interest earned by such portion of the fund deposited by the State Treasurer shall be collected by him and placed to the credit of the fund.

Any moneys remaining in the fund after satisfaction of each of the claims for injuries occurring before the effective date of P.L.1995, c.383 and payable under this section shall be deposited in the General Fund.

8. Section 16 of P.L.1952, c.12 (C.App. A:9-57.16) is amended to read as follows:

C.App. A:9-57.16 Insurance or reinsurance.

16. Funds credited to the special fund for the purposes of this act may be used to effect insurance or reinsurance with the war damage corporation or with any other authority or instrumentality, public or private, or otherwise to distribute the liability for benefits payable to those civil defense volunteers whose benefits, in accordance with P.L.1995, c.383, are payable from the special fund.

9. Section 17 of P.L.1952, c.12 (C.App. A:9-57.17) is amended to read as follows:

C.App. A:9-57.17 Special fund the sole source for payment of benefits.

17. The special fund for civil defense volunteers created by this act shall be the sole and exclusive source for the payment of benefits provided by this act for civil defense volunteers who were injured before the effective date of P.L.1995, c.383.

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

Approved January 10, 1996.

CHAPTER 384

AN ACT concerning surety bonds for certain construction projects and amending N.J.S.2A:44-143, N.J.S.2A:44-144, P.L.1982, c.189 and P.L.1986, c.43.

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

1. N.J.S.2A:44-143 is amended to read as follows:

Additional bond for payment of claims for labor, material, etc.; waiver, surety's obligation.

2A:44-143. a. (1) When public buildings or other public works or improvements are about to be constructed, erected, altered or repaired under contract, at the expense of the State or any contracting unit, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school district, the board, officer or agent contracting on behalf of the State, contracting unit or school district, shall require the payment and performance bond, as provided for by law, with an obligation for the payment by the contractor, and by all subcontractors, for all labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of such buildings, works or improvements and shall require that all payment and performance bonds be issued by a surety which meets the following standards:

(a) The surety shall have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(b) With respect to all payment and performance bonds in the amount of $850,000 or more, (i) if the amount of the bond is at least $850,000 but not more than $3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subsubparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards

promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the amount of the bond is more than $3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subsubparagraph (ii) of this subparagraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the appropriate contracting unit that it meets that equivalent set of standards set forth by the commissioner as promulgated.

(2) When such contract is to be performed at the expense of the State and is entered into by the Director of the Division of Building and Construction or State departments designated by the Director of the Division of Building and Construction, the director or the State departments may: (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the director's or department's assessment of the risk presented to the State by the type of contract and other relevant factors, and (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding $200,000.

(3) When such a contract is to be performed at the expense of a contracting unit or school district, the board, officer or agent contracting on behalf of the contracting unit or school district may: (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the board's, officer's or agent's assessment of the risk presented to

the contracting unit or school district by the type of contract and other relevant factors, and (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding $100,000.

b. A surety's obligation shall not extend to any claim for damages based upon alleged negligence that resulted in personal injury, wrongful death, or damage to real or personal property, and no bond shall in any way be construed as a liability insurance policy. Nothing herein shall relieve the surety's obligation to guarantee the contractor's performance of all conditions of the contract, including the maintenance of liability insurance if and as required by the contract. Only the obligee named on the bond, and any subcontractor performing labor or any subcontractor or materialman providing materials for the construction, erection, alteration or repair of the public building, work or improvement for which the bond is required pursuant to this section, shall have any claim against the surety under the bond.

c. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept more than one payment and performance bond to cover a single construction contract. The board, officer or agent may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or as determined by the Commissioner of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of the contract to be performed.

d. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, ____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

_____

_____

_____

_____.

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C.§9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

_____

_____

_____

_____.

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

_____

_____

_____

_____.

(4) The amount of the bond to which this statement and certification is attached is $ ____.

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set

forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

_____

_____

_____ ; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE
(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent), as (title of agent) for (name of surety), a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile), DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

_____
(Signature of certifying agent)

_____
(Printed name of certifying agent)

_____
(Title of certifying agent)

2. N.J.S.2A:44-144 is amended to read as follows:

Sureties on and amount of bond; condition for payment of claims; bond deposited, held for use of interested parties.

2A:44-144. The bond required by this article shall be executed by the contractor with such sureties as shall be approved by the board, officer or agent acting on behalf of the State, contracting

unit or school district, in an amount equal to at least 100 per cent of the contract price, and shall be conditioned for the payment by the contractor, and by all subcontractors, or his or their subcontractor, of all indebtedness which may accrue to any person, firm or corporation, in an amount not exceeding the sum specified in the bond, on account of any labor performed or materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of the public building or public work or improvement.

The bond shall be deposited with and be held by the board, officer or agent acting on behalf of the State, contracting unit or school district, for the use of any party interested therein.

3. Section 17 of P.L.1982, c.189 (C.18A:64A-25.17) is amended to read as follows:

C.18A:64A-25.17 Performance, guaranty and certificate.

17. Performance, guaranty and certificate. a. In addition to or independent of the guaranty which may be required pursuant to section 16, the county college may require that the successful bidder provide a surety company bond or other security acceptable to the county college:

(1) For the faithful performance of all provisions of the advertisement for bids, the specifications and any other documents issued to bidders or a repair or maintenance bond; and

(2) In such form as may be required in the specifications or other documents issued to bidders.

b. In every case in which such performance bond is required, the requirement shall be set forth in the specifications or other documents issued to all bidders, and every bidder shall be required to submit with the bid a certificate from a surety company stating that it will provide that bidder with such a performance bond in the specified amount and form.

c. The county college shall require that all payment and performance bonds be issued by a surety which meets the following standards:

(1) The surety shall have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(2) With respect to all payment and performance bonds in the amount of $850,000 or more, (a) if the amount of the bond is at least $850,000 but not more than $3.5 million, the surety shall hold a current certificate of authority, issued by the United States

Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (b) if the amount of the bond is more than $3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subparagraph (b) of this paragraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the appropriate county college that it meets that equivalent set of standards set forth by the commissioner as promulgated.

d. A county college shall not accept more than one payment and performance bond to cover a single construction contract. The county college may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or as determined by the Commissioner of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of the contract to be performed.

e. A board, officer or agent contracting on behalf of a county college shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, ___ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

_____
_____
_____
_____.

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C.§9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

_____
_____
_____
_____.

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of

(date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

_____
_____
_____
_____ .

(4) The amount of the bond to which this statement and certification is attached is $__ .

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

_____
_____
_____
_____; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE
(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent), as (title of agent) for (name of surety), a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile), DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

_____
(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)

4. Section 17 of P.L.1986, c.43 (C.18A:64-68) is amended to read as follows:

C.18A:64-68 Provision of surety company bond.

17. a. In addition to or independently of the guaranty which may be required pursuant to this article, the State college may require that the successful bidder provide a surety company bond or other security acceptable to the State college:

(1) For the faithful performance of all provisions of the advertisement for bids, the specifications and any other documents issued to bidders or a repair or maintenance bond; and

(2) In a form which may be required in the specifications or other documents issued to bidders.

b. In every case in which a performance bond is required, the requirement shall be set forth in the specifications or other documents issued to all bidders, and every bidder shall be required to submit with the bid a certificate from a surety company stating that it will provide that bidder with a performance bond in the specified amount and form.

c. The State college shall require that all performance bonds be issued by a surety which meets the following standards:

(1) The surety shall have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(2) With respect to all payment and performance bonds in the amount of $850,000 or more, (a) if the amount of the bond is at least $850,000 but not more than $3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Com-

missioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (b) if the amount of the bond is more than $3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subparagraph (b) of this paragraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the appropriate State college that it meets that equivalent set of standards set forth by the commissioner as promulgated.

d. A State college shall not accept more than one payment and performance bond to cover a single construction contract. The State college may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or as determined by the Commissioner of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of the contract to be performed.

e. A board, officer or agent contracting on behalf of a State college shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, ____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

_____
_____
_____
_____.

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C.§9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

_____
_____
_____
_____.

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

_____
_____
_____
_____.

(4) The amount of the bond to which this statement and certification is attached is $___.

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

_____

_____

_____; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE
(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent), as (title of agent) for (name of surety), a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile), DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

_____
(Signature of certifying agent)

_____
(Printed name of certifying agent)

_____
(Title of certifying agent)

5. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 385

AN ACT concerning municipal licenses and amending R.S.40:52-1 and P.L.1987, c.174.

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

1. R.S.40:52-1 is amended to read as follows:

Power to license and regulate.

40:52-1. The governing body may make, amend, repeal and enforce ordinances to license and regulate:

a. All vehicles used for the transportation of passengers, baggage, merchandise, and goods and chattels of every kind, and the owners and drivers of all such vehicles; and the places and premises in which or at which the different kinds of business or occupations mentioned herein are carried on and conducted. Nothing herein contained shall be construed as modifying or repealing any of the provisions of chapter 4 of Title 48 of the Revised Statutes (R.S.48:4-1 et seq.);

b. Autobuses, and the owners and drivers of all such vehicles, and to fix the fees for such licenses, which may be imposed for revenue, and to prohibit the operation of all such vehicles in the public streets or places of such municipality, unless such ordinances are complied with, whether such vehicles are operated over routes wholly or partly within the territorial limits of such municipality; the powers conferred by this section shall not be in substitution of but in addition to whatever other right, power and authority any such municipality may at any time have as to licensing, regulating, or control of the operation of such autobuses, commonly called jitneys, and this section shall not be construed as modifying or repealing any of the provisions of chapter 4 (R.S.48:4-1 et seq.) or article 3 of chapter 16 (R.S.48:16-23 et seq.) of Title 48 of the Revised Statutes;

c. Cartmen, expressmen, baggagemen, porters, common criers, hawkers, peddlers, employment agencies, pawnbrokers, junk shop-keepers, junk dealers, motor vehicle junk dealers, street sprinklers, bill posters, bill tackers, sweeps, scavengers, itinerant vendors of merchandise, medicines and remedies; and the places and premises in which or at which the different kinds of business or occupations mentioned herein are conducted and carried on;

d. Hotels, boardinghouses, lodging and rooming houses, trailer camps and camp sites, motels, furnished and unfurnished rented housing or living units and all other places and buildings used for sleeping and lodging purposes, and the occupancy thereof, restaurants and all other eating places, and the keepers thereof;

e. Automobile garages, dealers in second-hand motor vehicles and parts thereof, bathhouses, swimming pools, and the keepers thereof;

f. Theatres, cinema and show houses, opera houses, concert halls, dance halls, pool or billiard parlors, bowling alleys, exhibition grounds, and all other places of public amusement, circuses and traveling or other shows, plays, dances, exhibitions, concerts, theatrical performances, and all street parades in connection therewith;

g. Lumber and coal yards, stores for the sale of meats, groceries and provisions, dry goods and merchandise, and goods and chattels of every kind, and all other kinds of business conducted in the municipality other than herein mentioned, and the places and premises in or at which the business is conducted and carried on; street stands for the sale or distribution of newspapers, magazines, periodicals, books, and goods and merchandise or other articles;

h. Street signs and other objects projecting beyond the building line, into or over any public street or highway;

i. Auctioneers and their business, whether the auctioneers be real estate brokers engaged in selling at auction or real estate auctioneers licensed by the New Jersey Real Estate Commission; fix their fees, and license and regulate public auctions; make such regulations as the governing body of the municipality shall deem necessary, to protect the public against fraud at public auction sales, and for the safety and protection of the property of the municipality and its inhabitants, including the power to require from auctioneers a bond to the municipality, not exceeding the penal sum of $5,000.00, conditioned as the governing body shall require;

j. Sales of goods, wares and merchandise to be advertised, held out or represented, or which are advertised, held out or represented, to the public, by any means, directly or by implication, as forced sales at reduced prices or as insurance, bankruptcy, mortgage foreclosure, insolvency, removal, loss or expiration of lease or closing out sales, or as assignees', receivers' or trustees' sales or as sales of goods distrained or as sales of goods damaged by fire, smoke or water, except any sale which is to be held under a judicial order, judgment or decree or a writ issuing out of any court or to enforce any lawful lien or power of sale whether by judicial process or not or by a licensed auctioneer; to make such

regulations governing the advertisement holding out or representing to the public of such sales, and the conduct thereof, as the governing body of the municipality shall deem necessary to protect the public against fraud; to prohibit the advertising, holding out or representing to the public of any sale as being of the character above described which is not of such character and to fix license fees for the conduct of such sales and to impose penalties for the violation of any such ordinance;

k. Roving bands of nomads, commonly called gypsies; and

l. (Deleted by amendment, P.L.1984, c.205).

m. The rental of real property for commercial or residential purposes.

Nothing in this chapter contained shall be construed to authorize or empower the governing body of any municipality to license or regulate any person holding a license or certificate issued by any department, board, commission, or other agency of the State; provided, however, that the governing body of a municipality may make, amend, repeal and enforce ordinances to license and regulate real estate auctioneers or real estate brokers engaged in selling at auction and their business as provided in this section despite the fact that such real estate auctioneers or brokers may be licensed by the New Jersey Real Estate Commission and notwithstanding the provisions of this act or any other act.

2. Section 1 of P.L.1987, c.174 (C.40:52-1.2) is amended to read as follows:

C.40:52-1.2 Delinquent property taxes; revocation, suspension of license.

1. Except as provided herein, the governing body of a municipality may, by ordinance, as a condition for the issuance or renewal of any license or permit issued by, or requiring the approval of, the municipality, require that the applicant, if he is the owner thereof, pay any delinquent property taxes or assessments on the property that is the subject of the license or on which a licensed activity or business is or will be conducted. The ordinance may also provide for the revocation or suspension of a license or permit when any licensee, who is an owner of the property affected by the license or upon which the licensed business or activity is conducted, has failed to pay the taxes due on the property for at least three consecutive quarters. Upon payment of the delinquent taxes or assessments, the license or permit shall be restored. The provisions of this section shall not apply to or include any alcoholic beverage

license or permit issued pursuant to the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 386

AN ACT concerning surcharges for certain motor vehicle violations and supplementing P.L.1990, c.8 (C.17:33B-1 et seq.).

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

C.17:33B-14.1 Speeding violations, certain; surcharge unaffected.

1. a. In calculating a surcharge or other differential in rates based on motor vehicle penalty points promulgated by the Director of the Division of Motor Vehicles pursuant to section 1 of P.L.1982, c.43 (C.39:5-30.5), including any surcharge or differential based on the schedule of automobile insurance eligibility points promulgated by the Commissioner of Insurance pursuant to section 26 of P.L.1990, c.8 (C.17:33B-14), an insurer shall not consider any points assessed for a violation of any lawful speed limitation where the violator exceeded the speed limitation by less than 15 miles per hour, except that, the insurer may consider any such violations, in excess of one violation, of which the insured has been convicted in the three-year period immediately preceding the issuance or renewal of the policy. This section shall only apply to violations that occur on or after the effective date of this act, but shall in no case apply to a violation of subsection a. of R.S.39:4-98.

b. As used in this section, "insurer" means and includes an insurer writing private passenger automobile insurance in the voluntary market and any insurance plan established to provide private passenger automobile insurance pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1).

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 387

AN ACT exempting limousine businesses from overtime pay requirements and amending P.L.1966, c.113.

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

1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to read as follows:

C.34:11-56a1 Definitions.

2. 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 vehicle with a carrying capacity of not more than nine passengers, not including the driver, used in the business of carrying passengers for hire, which is hired by charter or for a particular contract, or by the day or the hour or other fixed period, or to transport passengers to a specified place, or which charges a fare or price agreed upon in advance between the operator and the passenger, or which is furnished as an accommodation for a patron in connection with other business purposes. "Limousine" shall not include taxicabs, hotel or airport shuttles and buses, or buses employed solely in transporting school children or teachers to and from school, or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to read as follows:

C.34:11-56a4 Minimum wage rate; exemptions.

5. Every employer shall pay to each of his employees wages at a rate of not less than $3.80 per hour as of the effective date of P.L.1990, c.18, $4.25 per hour as of April 1, 1991 and $5.05 per hour as of April 1, 1992 for 40 hours of working time in any week and 1 1/2 times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week, except this overtime rate shall not include any individual employed in a bona fide executive, administrative, or professional capacity or, if an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to part-time employees primarily engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c.153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside

salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.

The provisions of this section for the payment to an employee of not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week shall not apply to employees engaged to labor on a farm or employed in a hotel or to an employee of a common carrier of passengers by motor bus or to a limousine driver who is an employee of an employer engaged in the business of operating limousines or to employees engaged in labor relative to the raising or care of livestock.

Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid for each day worked not less than the minimum hourly wage rate multiplied by the total number of hours worked.

Full-time students may be employed by the college or university at which they are enrolled at not less than 85% of the effective minimum wage rate.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 388

AN ACT concerning the adoption of curfew ordinances for juveniles by municipalities and amending P.L.1992, c.132.

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

1. Section 2 of P.L.1992, c.132 (C.40:48-2.52) is amended to read as follows:

C.40:48-2.52 Definitions relative to adoption of curfew ordinances for juveniles.

2. a. As used in this act:

(1) "Juvenile" means an individual who is under the age of 18 years.

(2) "Guardian" means a person, other than a parent, to whom legal custody of the juvenile has been given by court order or who is acting in the place of the parent or is responsible for the care and welfare of the juvenile.

(3) "Public place" means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot or any other public building, structure or area.

b. A municipality is hereby authorized and empowered to enact an ordinance making it unlawful for a juvenile of any age under 18 years within the discretion of the municipality to be on any public street or in a public place between the hours of 10:00 p.m. and 6:00 a.m. unless accompanied by the juvenile's parent or guardian or unless engaged in, or traveling to or from, a business or occupation which the laws of this State authorize a juvenile to perform. Such an ordinance may also make it unlawful for any parent or guardian to allow an unaccompanied juvenile to be on any public street or in any public place during those hours.

c. An ordinance enacted pursuant to this act shall provide that violators shall be required to perform community service and may be subject to a fine of up to $1,000.00. If both a juvenile and the juvenile's parent or guardian violate such an ordinance, they shall be required to perform community service together.

d. An ordinance enacted pursuant to this act shall include exceptions permitting juveniles to engage in errands involving medical emergencies and to attend extracurricular school activities, and other cultural, educational and social events, sponsored by religious or community-based organizations after 10 p.m. and before 6 a.m.

e. An ordinance enacted pursuant to this act shall establish clear standards in precise language adequate to apprise a juvenile and a parent or guardian of that which is unlawful and adequate to circumscribe the discretion of police officers in order to overcome subjective and discriminatory enforcement.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 389

AN ACT concerning imitation firearms and amending N.J.S.2C:39-5.

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

1. N.J.S.2C:39-5 is amended to read as follows:

Unlawful possession of weapons.

2C:39-5. Unlawful Possession of Weapons.

a. Machine guns. Any person who knowingly has in his possession a machine gun or any instrument or device adaptable for use as a machine gun, without being licensed to do so as provided in N.J.S.2C:58-5, is guilty of a crime of the third degree.

b. Handguns. Any person who knowingly has in his possession any handgun, including any antique handgun without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the third degree.

c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

e. Firearms or other weapons in educational institutions.

(1) Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

(2) Any person who knowingly possesses any weapon enumerated in paragraphs (3) and (4) of subsection r. of N.J.S.2C:39-1 or any components which can readily be assembled into a firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 or any other weapon under circumstances not manifestly appropriate for such lawful use as it may have, while in or upon any part of the buildings or grounds of any school, college, university or other educational

institution without the written authorization of the governing officer of the institution is guilty of a crime of the fourth degree.

(3) Any person who knowingly has in his possession any imitation firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, or while on any school bus is a disorderly person, irrespective of whether he possesses a valid permit to carry a firearm or a valid firearms purchaser identification card.

f. Assault firearms. Any person who knowingly has in his possession an assault firearm is guilty of a crime of the third degree except if the assault firearm is licensed pursuant to N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c.32 (C.2C:58-12) or rendered inoperable pursuant to section 12 of P.L.1990, c.32 (C.2C:58-13).

g. The temporary possession of a handgun, rifle or shotgun by a person receiving, possessing, carrying or using the handgun, rifle, or shotgun under the provisions of section 1 of P.L.1992, c.74 (C.2C:58-3.1) shall not be considered unlawful possession under the provisions of subsection b. or c. of this section.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 390

AN ACT concerning agricultural liming materials, amending and supplementing P.L.1968, c.392, and repealing part of the statutory law.

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

1. Section 2 of P.L.1968, c.392 (C.4:9-21.2) is amended to read as follows:

C.4:9-21.2 Definitions.

2. As used in this act:

(a) "Agricultural liming materials" means all suitable materials containing calcium or magnesium in chemical form, physical condition and quantity capable of neutralizing soil acidity, which

shall include, but need not be limited to, limestone, burnt lime, marl, and industrial by-product.

(b) "Limestone" means a material consisting primarily of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(c) "Burnt lime" means a material, made from limestone, which consists primarily of calcium oxide or a combination of calcium oxide with magnesium oxide.

(d) "Hydrated lime" means a material, made from burnt lime, which consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide or magnesium hydroxide.

(e) "Brand" means the term, designation, trademark, product name or other specific designation under which a single agricultural liming material is offered for sale.

(f) "Fineness" means the percentage by weight of the material, which will pass through sieves of specified sizes. The fineness shall be measured in reference to 20 mesh, 60 mesh and 100 mesh sieves of United States Standard designation.

(g) "Physical classification" means the fineness of the agricultural liming material as it relates to its particle size.

(h) "Ton" means a net weight of 2,000 pounds avoirdupois.

(i) "Percent" or "percentage" means by weight.

(j) "Bulk" means in nonpackaged form.

(k) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(l) "Person" means individual, partnership, association, firm or corporation.

(m) "State board" means the State Board of Agriculture of New Jersey.

(n) "Secretary" means the Secretary of Agriculture of New Jersey.

(o) "Marl" means a granular or loosely consolidated earthy material composed primarily of sea shell fragments and calcium carbonate.

(p) "Industrial by-product" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

(q) "Calcium carbonate equivalent" or "CCE" means the acid neutralizing capacity of an agricultural liming material expressed as the percentage by weight of the liming material consisting of calcium carbonate and magnesium carbonate, taking into account the relative molecular weights of the two compounds.

(r) "Weight" means the weight of undried material as offered for sale.

(s) "Mesh permeability factor evaluation test" or "MPFET" means the assignment of values to a single agricultural liming material product, in order to rank and label relative particle size, in the following manner:

Percentage by weight of the product that passes through:
20-60 mesh sieve x .4 = A
60-100 mesh sieve x .8 = B
100 mesh sieve or finer x 1.0 = C.

(t) "Mesh permeability factor" or "MPF" means the value assigned to a single agricultural liming material product based upon relative particle size, obtained from the MPFET conducted pursuant to subsection (s) of this section and obtained in the following manner:

MPF = A + B + C.

(u) "Effective neutralizing value" or "ENV" means the value of the neutralizing capability of a single agricultural liming material product which takes into account relative particle sizes and the percentage by weight of the calcium carbonate equivalent obtained by the following formula:

ENV = MPF x CCE.

(v) "Single agricultural liming material" means a constituent of agricultural liming materials.

(w) "State Chemist" means the person appointed pursuant to R.S.4:1-42.

2. Section 3 of P.L.1968, c.392 (C.4:9-21.3) is amended to read as follows:

C.4:9-21.3 Information affixed to each package of agricultural liming materials.

3. (a) Agricultural liming materials sold or offered for sale in the State shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

(1) The name and principal office address of the licensee.

(2) The brand or trade name of the material.

(3) The identification of the product as to the type of the agricultural liming material.

(4) The net weight of the agricultural liming material.

(5) The fineness classification of all materials except burnt lime, hydrated lime and marl. A material shall be labeled as fine sized when at least 95% by weight passes through a 20 mesh sieve, 60% by weight passes through a 60 mesh sieve and 50% by weight passes through a 100 mesh sieve. A material shall be labeled as medium sized when at least 90% by weight passes through a 20 mesh sieve, 50% by weight passes through a 60 mesh sieve, and 30% by weight passes through a 100 mesh sieve. A material shall be labeled as coarse sized when the material fails to meet minimums for the fine sized and the medium sized classification.

(6) The minimum percentage on a dry weight basis of calcium and magnesium.

(7) (Deleted by amendment, P.L.1995, c.390).

(8) The calcium carbonate equivalent.

(9) The effective neutralizing value.

(b) (Deleted by amendment, P.L.1995, c.390).

(c) No information or statement shall appear on any package, label or delivery slip or advertising matter which is false or misleading to the purchaser as to the quality, analysis, type or composition of the agricultural liming material.

(d) In the case of any material which has been adulterated subsequent to packaging, labeling or loading thereof and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip such notice to identify the kind and degree of such adulteration therein.

(e) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statement required by this section for each brand of material.

3. Section 4 of P.L.1968, c.392 (C.4:9-21.4) is amended to read as follows:

C.4:9-21.4 Requirements for sale of agricultural liming material.

4. (a) No person shall sell or offer for sale in this State agricultural liming material unless it complies with the provisions of "The New Jersey Agricultural Liming Materials Act," P.L.1968, c.392 (C.4:9-21.1 et seq.) and any rules or regulations adopted pursuant thereto.

(b) No agricultural liming material shall be sold or offered for sale in this State which contains toxic materials in quantities injurious to plants or animals.

4. Section 6 of P.L.1968, c.392 (C.4:9-21.6) is amended to read as follows:

C.4:9-21.6 License required; expiration.

6. No person shall manufacture for distribution in this State or distribute in this State any agricultural liming material until a license has been obtained by the person whose labeling is applied to such agricultural liming material from the State board or its authorized agent. All licenses shall expire on December 31 of each year.

5. Section 8 of P.L.1968, c.392 (C.4:9-21.8) is amended to read as follows:

C.4:9-21.8 Statement submitted by licensee.

8. Within the 30-day period following December 31 of each year, each licensee shall submit on a form furnished by the State board or its authorized agent a statement setting forth the number of net tons of each agricultural liming material sold by him for use in the State during the previous 12-month period. Such statement shall be accompanied by payment of the inspection fee at the rate of $0.02 per ton. Such reports shall be confidential and no information therein shall be disclosed in any manner that will reveal the operation of any licensee.

6. Section 9 of P.L.1968, c.392 (C.4:9-21.9) is amended to read as follows:

C.4:9-21.9 Empowerment of State board, authorized agent.

9. The State board or its authorized agent is hereby empowered and it shall be the duty of its agent to sample, inspect, test, and analyze agricultural liming materials to determine compliance with the provisions of P.L.1968, c.392 (C.4:9-21.1 et seq.). The State board or its authorized agent for the purpose of taking samples and to examine the records relating to the tonnage of agricultural liming materials distributed in New Jersey, shall have full access during business hours to all places wherein agricultural liming materials are offered for sale or where records of the tonnage distributed in New Jersey are kept. Upon written notice, the State board or its agent may remove from sale any lot of agricultural liming material until it has been determined that the material is in full compliance with this act.

7. Section 10 of P.L.1968, c.392 (C.4:9-21.10) is amended to read as follows:

C.4:9-21.10 Violations; penalties.

10. Any person convicted of violating any provision of this act or any rule or regulation promulgated thereunder shall be subject to a penalty of not less than $50 nor more than $200 to be enforced by summary proceedings under "the penalty enforcement law," N.J.S.2A:58-1 et seq. Upon receiving any information of a violation of any part of this act other than a violation involving a weighed or measured deficiency or the rules and regulations issued thereunder, the secretary, or any assistant designated by him for such purpose, is empowered to hold hearings, formal or informal, upon said violation and upon finding the violation to have been committed, to assess a penalty against the person alleged to have committed such violation, in an amount not to exceed the maximum limit set forth in this section as the secretary deems proper under the circumstances. In the event the violator makes satisfactory settlement, no further prosecution shall be had upon that violation. Payment of a penalty, in the form of a settlement, shall be deemed equivalent to a conviction for a violation of this act. Violations not settled in this manner may be referred to the court of competent jurisdiction. Nothing in this act shall be construed as requiring the State board or its authorized agent to report for prosecution or for the institution of seizure proceedings as a result of minor violations of "The New Jersey Agricultural Liming Materials Act," P.L.1968, c.392 (C.4:9-21.1 et seq.) when it believes that the public interest will best be served by a suitable written warning.

C.4:9-21.12 Issuance of stop sale, use, removal order.

8. The State Board or its authorized agent may issue in writing a stop sale, use or removal order to the owner or custodian of any agricultural liming material when the State Chemist finds that the material is being offered for sale or sold in violation of the provisions of "The New Jersey Agricultural Liming Materials Act," P.L.1968, c.392 (C.4:9-21.1 et seq.) or any rules or regulations adopted thereunder. The order may require that the material be held at a designated place until the violation has been corrected and an order has been issued in writing authorizing its removal. The board shall authorize removal of the material when the requirements of P.L.1968, c.392 have been met and any costs and expenses incurred by the department in connection with the action have been paid.

Repealer.

9. Section 5 of P.L.1968, c.392 (C.4:9-21.5) is repealed.

10. This act shall take effect immediately and shall apply to all agricultural liming materials sold on or after the date falling one year from the effective date of this act.

Approved January 10, 1996.

CHAPTER 391

AN ACT concerning campaign advertisements, amending and supplementing P.L.1973, c.83, and repealing parts of the statutory law.

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

C.19:44A-22.2 Findings, declarations relative to campaign advertisements.

1. The Legislature finds and declares that:

a. in McIntyre v. Ohio, 63 U.S.L.W. 4279 (U.S. April 19, 1995) (No. 93-986), the United States Supreme Court invalidated, on First Amendment grounds, an Ohio statute prohibiting the distribution of campaign materials which did not bear the issuer's name and address;

b. nevertheless, this decision recognized that there may be circumstances in which a state's enforcement interest justifies a more limited identification requirement;

c. the court noted that in the area of campaign finance, in particular, a more narrowly drawn statute may be permitted;

d. prior decisions of the United States Supreme Court have established that regulation of campaign finance may be justified by a state's interest in preventing actual or perceived corruption; and

e. because the McIntyre decision calls into question the validity of certain New Jersey statutes requiring disclosures on campaign advertising, there is a need to revise the law so that it is narrowly-tailored to help effectuate the State's compelling interest in preventing corruption in connection with the financing of campaigns for public office.

C.19:44A-22.3 Identification of source of financing of communications; requirements; enforcement.

2. a. Whenever a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or any group other than such a committee, or any person makes,

incurs or authorizes an expenditure for the purpose of financing a communication aiding or promoting the nomination, election or defeat of any candidate or providing political information on any candidate which is an expenditure that the committee, group or person is required to report to the Election Law Enforcement Commission pursuant to P.L.1973, c.83 (C.19:44A-1 et seq.), the communication shall clearly state the name and business or residence address of the committee, group or person, as that information appears on reports filed with the commission, and that the communication has been financed by that committee, group or person.

b. Whenever a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or any group other than such a committee, or any person makes, incurs or authorizes an expenditure for the purpose of financing a communication aiding the passage or defeat of any public question or providing political information on any public question which is an expenditure that the committee, group or person is required to report to the Election Law Enforcement Commission pursuant to P.L.1973, c.83 (C.19:44A-1 et seq.), the communication shall clearly state the name and business or residence address of the committee, group or person, as that information appears on reports filed with the commission, and that the communication has been financed by that committee, group or person.

c. A communication that is financed by any person, not acting in concert with a candidate or any person or committee acting on behalf of a candidate, shall contain a clear and conspicuous statement that the expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, any such candidate, person or committee.

d. Any person who accepts compensation from a committee, group or individual described in subsection a. or b. of this section for the purpose of printing, broadcasting, or otherwise disseminating to the electorate a communication shall maintain a record of the transaction which shall include an exact copy of the communication and a statement of the number of copies made or the dates and times that the communication was broadcast, and the name and address of the committee, group or individual paying for the communication. The record shall be maintained on file at the principal office of the person accepting the communication for at least two years and shall be available for public inspection during normal business hours.

e. As used in this section, "communication" means a press release, pamphlet, flyer, form letter, sign, billboard or paid advertisement printed in any newspaper or other publication or broadcast on radio or television, or any other form of advertising directed to the electorate.

f. The provisions of this section shall not be construed to apply to any bona fide news item or editorial contained in any publication of bona fide general circulation.

g. (1) A person who violates a provision of this section shall be subject to the civil penalties provided in section 22 of P.L.1973, c.83 (C.19:44A-22).

(2) A person who, with intent to injure anyone or to conceal wrongdoing, purposely falsifies, conceals or misrepresents information required by this section to be disclosed or maintained on file is guilty of a crime of the fourth degree.

h. The Election Law Enforcement 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 purpose of this section. The commission may, by regulation, exempt from the provisions of this section small, tangible items of de minimis value which are commonly used in campaigns to convey a political message, including, but not limited to, buttons, combs, and nail files. The commission may also, by regulation, exempt from the provisions of this section advertising space purchased by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, legislative leadership committee or other person, in a political program book distributed at a fund-raising event if the financial transaction is otherwise subject to disclosure. An exemption granted by the commission with respect to any item shall not relieve the committee, group or individual making an expenditure therefor from any applicable campaign finance reporting requirements.

In addition, the commission shall have the authority to provide, by regulation, that a communication need not include the address of the committee, group or person financing the communication in circumstances where the name of a committee, group or person would be sufficient to identify it from the commission's records.

3. Section 11 of P.L.1973, c.83 (C.19:44A-11) is amended to read as follows:

C.19:44A-11 Procedures for contributions, expenditures; requirements.

11. No contribution of money or other thing of value, nor obligation therefor, including but not limited to contributions, loans

or obligations of a candidate himself or of his family, shall be made or received, and no expenditure of money or other thing of value, nor obligation therefor, including expenditures, loans or obligations of a candidate himself or of his family, shall be made or incurred, directly or indirectly, to support or defeat a candidate in any election, or to aid the passage or defeat of any public question, except through:

a. The duly appointed campaign treasurer or deputy campaign treasurers of the candidate committee or joint candidates committee;

b. The duly appointed organizational treasurer or deputy organizational treasurers of a political party committee or a continuing political committee;

c. The duly appointed campaign treasurer or deputy campaign treasurers of a political committee; or

d. The duly appointed organizational treasurer or deputy organizational treasurer of a legislative leadership committee.

It shall be lawful, however, for any person, not acting in concert with any other person or group, to expend personally from his own funds a sum which is not to be repaid to him for any purpose not prohibited by law, or to contribute his own personal services and personal traveling expenses, to support or defeat a candidate or to aid the passage or defeat of a public question; provided, however, that any person making such expenditure shall be required to report his or her name and mailing address and the amount of all such expenditures and expenses, except personal traveling expenses, if the total of the money so expended, exclusive of such traveling expenses, exceeds $500, and also, where the person is an individual, to report the individual's occupation and the name and mailing address of the individual's employer, to the Election Law Enforcement Commission at the same time and in the same manner as a political committee subject to the provisions of section 8 of this act.

No contribution of money shall be made in currency, except contributions in response to a public solicitation, provided that cumulative currency contributions of up to $200 may be made to a candidate committee or joint candidates committee, a political committee, a continuing political committee, a legislative leadership committee or a political party committee if the contributor submits with the currency contribution a written statement of a form as prescribed by the commission, indicating the contributor's name, mailing address and occupation and the amount of the contribution, including the contributor's signature and the name and mailing address of the contributor's employer.

Any anonymous contribution received by a campaign treasurer or deputy campaign treasurer shall not be used or expended, but shall be returned to the donor, if his identity is known, and if no donor is found, the contribution shall escheat to the State.

No person, partnership or association, either directly or through an agent, shall make any loan or advance, the proceeds of which that person, partnership or association knows or has reason to know or believe are intended to be used by the recipient thereof to make a contribution or expenditure, except by check or money order identifying the name, mailing address and occupation or business of the maker of the loan, and, if the maker is an individual, the name and mailing address of that individual's employer; provided, however, that such loans or advances to a single individual, up to a cumulative amount of $50 in any calendar year, may be made in currency.

Repealer.

4. Sections 2 through 5 of P.L.1963, c.57 (C.19:34-38.1 et seq.), P.L.1966, c.70 (C.19:34-38.5), N.J.S.18A:14-97, and N.J.S.18A:14-97.1, N.J.S.18A:14-97.2 and N.J.S.18A:14-97.3 are repealed.

5. This act shall take effect on February 1 next following the date of enactment.

Approved January 10, 1996.

CHAPTER 392

AN ACT concerning construction liens for improvements made to certain property and amending P.L.1993, c.318.

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

1. Section 2 of P.L.1993, c.318 (C.2A:44A-2) is amended to read as follows:

C.2A:44A-2 Definitions relative to construction liens.

2. As used in this act:

"Claimant" means a person, as defined in R.S.1:1-2, having the right to file a lien claim on real property pursuant to the provisions of this act.

"Contract" means any agreement, or amendment thereto, in writing, evidencing the respective responsibilities of the contracting parties, which, in the case of a supplier, shall include a delivery or order slip signed by the owner, contractor, or subcontractor having a direct contractual relation with a contractor, or an authorized agent of any of them.

"Contract price" means the amount specified in a contract for the provision of work, services, material or equipment.

"Contractor" means any person in direct privity of contract with the owner of real property for improvements thereto. A construction manager who enters into a single contract with an owner for the performance of all construction work within the scope of a construction manager's contract, a construction manager who enters into a subcontract, or a construction manager who is designated as an owner's agent without entering into a subcontract is also a "contractor" for the purposes of this act. A licensed architect, engineer or land surveyor or certified landscape architect who is not a salaried employee of the contractor or the owner, performing professional services related to the improvement of property in direct contract with the property owner shall be considered a "contractor" for the purposes of this act.

"County clerk" means the clerk of the county in which real property to be improved is situated.

"Equipment" means any machinery or other apparatus, including rental equipment delivered to the site to be improved or used on the site to be improved, for incorporation in the improved real property or for use in the construction of the improvement of the real property but not incorporated therein. A lien for equipment shall arise only for equipment used on site for the improvement of real property, including equipment installed in the improved real property. In the case of rental equipment, the amount of any lien shall be limited to the rental rates as set forth in the rental contract.

"Filing" means the lodging for record and indexing of the documents authorized to be filed or recorded pursuant to this act in the office of the county clerk, or, in the case of real property located in more than one county, in the office of the county clerk of each such county.

"Improvement" means any actual or proposed physical changes to real property by the provision of work or services by a contractor or subcontractor, pursuant to the terms of a contract, whether or not such physical change is undertaken, and includes the construction, reconstruction, alteration, repair, demolition or removal of any building or structure, any addition to a building or struc-

ture, or any construction or fixture necessary or appurtenant to a building or structure for use in conjunction therewith. "Improvement" includes excavation, digging, drilling, drainage, dredging, filling, irrigation, land clearance, grading or landscaping. "Improvement" shall not include the mining of minerals or removal of timber, gravel, soil, or sod which is not integral to or necessitated by the improvement to real property. "Improvement" shall not include public works or improvements to real property contracted for and awarded by a public entity. Any work or services requiring a license for performance including, but not limited to, architectural, engineering, plumbing or electrical construction, shall not constitute an improvement unless performed by a licensed claimant.

"Interest in real property" means any ownership, possessory security or other enforceable interest, including, but not limited to, fee title, easement rights, covenants or restrictions, leases and mortgages.

"Lien" or "construction lien" means a lien on the owner's interest in the real property arising pursuant to the provisions of this act.

"Material" means any goods delivered to, or used on the site to be improved, for incorporation in the improved real property, or for consumption as normal waste in construction operations; or for use on site in the construction or operation of equipment used in the improvement of the real property but not incorporated therein. The term "material" does not include fuel provided for use in motor vehicles or equipment delivered to or used on the site to be improved.

"Mortgage" means a loan which is secured by a lien on real property.

"Owner" or "owner of real property" means any person, including a tenant, with an estate or interest in real property who personally or through an authorized agent enters into a contract for improvement of the real property.

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

"Residential construction contract" means any written contract for the construction or improvement to a one- or two-family dwelling, or any portion of the dwelling, which shall include any residential unit in a condominium subject to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.), any residential unit in a housing cooperative, any residential unit contained in a fee simple townhouse development, any residential unit contained in a horizontal property regime as defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and any residential unit contained in a planned unit development as defined in section 3.3 of P.L.1975, c.291 (C.40:55D-6).

"Residential purchase agreement" means a written contract between a buyer and a seller for the purchase of a one- or two-family dwelling, any residential unit in a condominium subject to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.), any residential unit in a housing cooperative, any residential unit contained in a fee simple townhouse development, any residential unit contained in a horizontal property regime as defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and any residential unit contained in a planned unit development as defined in section 3.3 of P.L.1975, c.291 (C.40:55D-6).

"Services" means professional services performed by a licensed architect, engineer or land surveyor or certified landscape architect who is not a salaried employee of the contractor, a subcontractor or the owner and who is in direct privity of contract with the owner for the preparation of plans, documents, studies, or the provision of other services by a licensed architect, engineer or land surveyor prepared in connection with a proposed or an actual physical change to real property, whether or not such physical change is undertaken.

"State" means the State of New Jersey and any office, department, division, bureau, board, commission or agency of the State.

"Subcontractor" means any person providing work or services in connection with the improvement of real property pursuant to a contract with a contractor or pursuant to a contract with a subcontractor in direct privity of contract with a contractor.

"Supplier" means any supplier of material or equipment, including rental equipment, having a direct privity of contract with an owner, contractor or subcontractor in direct privity of contract with a contractor. The term "supplier" shall not include a person who supplies fuel for use in motor vehicles or equipment delivered to or used on the site to be improved or a seller of personal property who has a security agreement providing a right to perfect either a security interest pursuant to Title 12A of the New Jersey Statutes or a lien against the motor vehicle pursuant to applicable law.

"Work" means any activity, including labor, performed in connection with the improvement of real property. The term "work" includes architectural, engineering or surveying services provided by salaried employees of a contractor or subcontractor, as part of the work of the contractor or subcontractor, provided, however, that the right to file a lien claim for those services shall be limited to the contractor or subcontractor.

2. Section 41 of P.L.1993, c.318 is amended to read as follows:

41. This act shall take effect on April 22, 1994 and shall apply to any improvement for which a construction permit is issued on or after April 22, 1994 and to any improvement upon which work or services are commenced on or after April 22, 1994 if a construction permit is not required; and the prior law being repealed in section 40 of this act shall apply to any improvement for which a construction permit is issued prior to April 22, 1994 and to any improvement upon which work or services are commenced prior to April 22, 1994 if a construction permit is not required.

3. This act shall take effective immediately and shall be retroactive to December 23, 1993.

Approved January 10, 1996.

CHAPTER 393

AN ACT concerning the enforcement of the workers' compensation law and amending R.S.34:15-79 and supplementing chapter 15 of Title 34 of the Revised Statute.

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

1. R.S.34:15-79 is amended to read as follows:

Penalties for failure to carry insurance.

34:15-79. An employer who fails to provide the protection prescribed in this article shall be guilty of a disorderly persons offense and shall be guilty of a crime of the fourth degree if such failure is willful. In cases where a workers' compensation award in the Division of Workers' Compensation of New Jersey against the defendant is not paid at the time of the sentence, the court may suspend sentence upon that defendant and place him on probation for any period with an order to pay the delinquent compensation award to the claimant through the probation office of the county. Where the employer is a corporation, the president, secretary, and the treasurer thereof who are actively engaged in the corporate business shall be liable for failure to secure the protection prescribed by this article. Any contractor placing work

with a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement.

Failure to produce at the time of the trial 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 Insurance to self-insure for workers' compensation pursuant to R.S.34:15-77, which was in force for the time cited by the Department of Labor, creates a rebuttable presumption that the employer was uninsured when charged with a violation of this section.

All fines collected under the terms of this section shall be paid to the State Treasurer and credited on the records of the State Comptroller to the account of the Division of Vocational Rehabilitation Services in the Department of Labor, to be used in carrying out the provisions of P.L.1955, c.64 (C.34:16-20 et seq.).

The Director of the Division of Workers' Compensation, or any officer or employee of the division designated by him, upon finding that an employer has failed for a period of not less than 10 consecutive days to make the provisions for payment of compensation required by R.S.34:15-71 and R.S.34:15-72, shall impose upon that employer, in addition to all other penalties, fines or assessments provided for in chapter 15 of Title 34 of the Revised Statutes or in any supplement thereto, an assessment in the amount of up to $1,000.00 and when the period exceeds 20 days, an additional assessment of up to $1,000.00 for each period of 10 days thereafter. All assessments under this act shall be enforced and collected in accordance with section 12 of P.L.1966, c.126 (C.34:15-120.3). All penalties and assessments collected under this section shall be paid into the "uninsured employer's fund."

C.34:15-89.1 Notification to mutual associations, stock companies of requirement of employer ID numbers.

2. a. On or before March 1, 1996 and thereafter, the Compensation Rating and Inspection Bureau shall notify all mutual associations and stock companies authorized to write workers' compensation or employer's liability insurance on risks located in this State of the requirements of subsections b. and c. of this section.

b. On and after July 1, 1996, all mutual associations and stock companies authorized to write workers' compensation or employer's liability policies on risks located in this State shall, upon application for new policies or renewal of any existing policies, require submission of the employer identification number as assigned by the Department of Labor pursuant to the provisions of the "unemployment compensation law," R.S.43:21-1 et seq., by each employer and shall maintain the identification number in their records and shall include the identification number on policies of insurance to be filed with the Compensation Rating and Inspection Bureau.

If the employer has been exempted from or is otherwise not subject to the provisions of the "unemployment compensation law," the mutual association or stock company writing workers' compensation insurance or employer's liability insurance coverage on risks of that employer shall, in a form and manner prescribed by the Department of Labor, assign an identification number to that employer.

If an employer fails or refuses to comply with the reporting requirements of this subsection, the mutual association or stock company shall immediately notify the Division of Workers' Compensation of such failure or refusal. Failure or refusal without reasonable cause shall result in the assessment of a penalty of up to $1,000 for each failure or refusal which shall be enforceable on a petition filed by the "uninsured employer's fund" in a summary proceeding before a judge of compensation upon notice to the employer and the proceeds of which shall be paid into the "uninsured employer's fund."

c. On and after July 1, 1996 the Compensation Rating and Inspection Bureau shall record and maintain the employer identification numbers received from mutual associations and stock companies pursuant to subsection b. of this section. The bureau shall, upon request of the Division of Workers' Compensation, provide to the division information, in a form and manner as prescribed by the division, with respect to the workers' compensation or employer's liability insurance coverage status of employers in this State, including the employer identification numbers.

d. On or before March 1, 1996 the Department of Insurance shall provide to the Division of Workers' Compensation a complete list of all employers engaged in business in this State who have been authorized, pursuant to the provisions of R.S.34:15-77 et seq., to self-insure for the payment of compensation. After that date, the department shall continue to provide notification to the division, in a form and manner as prescribed by the division, of

any newly approved self-insured employer or the recision of the authority for any previously approved employer to self-insure.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 394

AN ACT providing self-employment assistance and entrepreneurial training, amending P.L.1992, c.43, P.L.1992, c.46, and amending and supplementing chapter 21 of Title 43 of the Revised Statutes.

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

C.43:21-67 Short title.

1. This act shall be known and may be cited as the "Self-Employment Assistance and Entrepreneurial Training Act."

C.43:21-68 Findings, declarations relative to small business.

2. The Legislature finds and declares that a significant percentage of new jobs in this country are created by small businesses and that approximately 12 percent of the persons employed in the United States are self-employed, mostly in small businesses. In the wake of recent corporate downsizing, it is imperative that ways are found to help unemployed individuals, including professional and technical employees, to re-enter the labor force. Experience in numerous other states and in certain urban areas of New Jersey has shown that "micro-lending," or carefully targeting small loans to individuals with well-developed, realistic business plans, has been successful in helping those individuals to establish small businesses and become self-employed entrepreneurs. This approach is particularly successful where the loan recipients are part of a peer group that provides support, advice and assistance, and helps to ensure loan repayments.

C.43:21-69 Definitions relative to self-employment assistance.

3. As used in P.L.1995, c.394 (C.43:21-67 et al.):

"Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor.

"Full-time basis" with respect to the amount of time spent participating in self-employment assistance activities shall have the meaning contained in regulations adopted by the Commissioner of Labor.

"Peer group" means a group of not more than twenty participating individuals who provide mutual assistance and support for each other's efforts to establish businesses and become self-employed entrepreneurs.

"Reemployment services" means job search assistance and job placement services, including counseling, testing, assessment, job search workshops, job clubs, referrals to employers and providing occupational and labor market information.

"Regular benefits" means benefits payable to an individual under the "unemployment compensation law" (R.S.43:21-1 et seq.), including benefits payable to federal civilian employees and to ex-service members pursuant to 5 U.S.C. chapter 85, but not including additional benefits provided pursuant to P.L.1992, c.47 (C.43:21-57 et seq.) or extended benefits.

"Self-employment assistance activities" means activities, approved by the division, in which an individual participates for the purpose of establishing a business and becoming self-employed, including: activities in which the individual participates in connection with self-employment assistance services; and other activities in which the individual engages to establish the business, which may, at the discretion of the division, include participation in a peer group.

"Self-employment assistance allowance" means an allowance, payable in lieu of regular benefits and from the unemployment compensation fund, to an individual participating in self-employment assistance activities who meets the requirements of P.L.1995, c.394 (C.43:21-67 et al.).

"Self-employment assistance services" means services provided to an individual, including entrepreneurial training, business counseling, and technical assistance, to help the individual to develop a business plan, establish a business and become self-employed, including entrepreneurial training and technical assistance supported by training grants provided pursuant to subsection b. of section 6 of P.L.1992, c.43 (C.34:15D-6).

"Worker profiling system" means the worker profiling system established pursuant to section 2 of P.L.1992, c.46 (C.43:21-4.1).

"Workforce Development Partnership Program" means the program created pursuant to P.L.1992, c.43 (C.34:15D-1 et seq.).

C.43:21-70 Self-employment assistance allowance; conditions.

4. a. Any unemployed individual who qualifies for regular benefits and is identified through the worker profiling system as likely to exhaust regular benefits may apply to the division for a self-employment assistance allowance. If the individual is selected to receive a self-employment assistance allowance, the Department of Labor may also provide the individual with any available self-employment assistance services it deems appropriate, including services available from the Workforce Development Partnership Program, or the department may refer the individual to any other private or public entity it deems appropriate to provide the services. The department shall provide the individual with appropriate information available to the department regarding possible sources of financing for entrepreneurial activities, including information obtained from the Department of Banking and information regarding suitable "micro-lending" programs.

b. The weekly self-employment assistance allowance payable pursuant to this section to an individual shall be equal to the weekly benefit amount for regular benefits. In no instance shall a self-employment assistance allowance and regular benefits be paid to an individual with respect to the same period. The sum of the allowance and regular benefits paid under P.L.1995, c.394 (C.43:21-67 et al.) with respect to any benefit year shall not exceed the maximum benefit amount established for regular benefits alone with respect to that benefit year. The allowance shall not be paid for any week in which the individual does not participate, on a full-time basis, in self-employment assistance activities authorized by the division.

c. A self-employment assistance allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits, except as otherwise provided in P.L.1995, c.394 (C.43:21-67 et al.).

d. The aggregate number of individuals receiving self-employment assistance allowances at any time shall not exceed one percent of the number of individuals receiving regular benefits. The Commissioner of Labor shall adopt regulations consistent with the provisions of P.L.1995, c.394 (C.43:21-67 et al.) to establish eligibility requirements and procedures for the selection of individuals to receive self-employment assistance allowances and self-employment assistance services.

e. Self-employment assistance allowances shall be charged to employers in the same manner as provided for the charging of regular benefits.

f. The provisions of this section shall apply to weeks beginning after the effective date of P.L.1995, c.394 (C.43:21-67 et al.) and after any plan required by the United States Department of Labor is approved by that department. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this section, unless that date is a Saturday in which case the authority shall terminate as of that date.

C.43:21-71 Rules, regulations.

5. The Department of Labor shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to effectuate the purposes of P.L.1995, c.394 (C.43:21-67 et al.).

6. R.S.43:21-3 is amended to read as follows:

Benefits.

43:21-3. Benefits.

(a) Payment of benefits.

All benefits shall be promptly paid from the fund in accordance with such regulations as may be prescribed hereunder.

(b) Weekly benefits for unemployment.

With respect to an individual's benefit year commencing on or after July 1, 1961, such individual, if eligible and unemployed (as defined in subsection (m) of R.S.43:21-19), shall be paid an amount (except as to final payment) equal to his weekly benefit rate less any remuneration, other than remuneration from self-employment paid to an individual who is receiving a self-employment assistance allowance, paid or payable to him for such week in excess of 20% of his weekly benefit rate (fractional part of a dollar omitted) or $5.00, whichever is the greater; provided that such amount shall be computed to the next lower multiple of $1.00 if not already a multiple thereof.

(c) Weekly benefit rate.

(1) With respect to an individual whose benefit year commences after September 30, 1984, his weekly benefit rate under each determination shall be 60% of his average weekly wage, subject to a maximum of 56 2/3% of the Statewide average weekly remuneration paid to workers by employers subject to this chapter (R.S.43:21-1 et seq.), as determined and promulgated by the Commissioner of Labor; provided, however, that such individ-

ual's weekly benefit rate shall be computed to the next lower multiple of $1.00 if not already a multiple thereof.

(2) Dependency benefits.

(A) With respect to an individual whose benefit year commences after September 30, 1984, the individual's weekly benefit rate as determined in paragraph (1) of this subsection (c) will be increased by 7% for the first dependent and 4% each for the next two dependents (up to a maximum of three dependents), computed to the next lower multiple of $1.00 if not already a multiple thereof, except that the maximum weekly benefit rate payable for an individual claiming dependency benefits shall not exceed the maximum amount determined under paragraph (1) of this subsection (c).

(B) For the purposes of this paragraph (2), a dependent is defined as an individual's unemployed spouse or an unemployed unmarried child (including a stepchild or a legally adopted child) under the age of 19 or an unemployed unmarried child, who is attending an educational institution as defined in subsection (y) of R.S.43:21-19 on a full-time basis and is under the age of 22. If an individual's spouse is employed during the week the individual files an initial claim for benefits, this paragraph (2) shall not apply. If both spouses establish a claim for benefits in accordance with the provisions of this chapter (R.S. 43:21-1 et seq.), only one shall be entitled to dependency benefits as provided in this paragraph (2).

(C) Any determination establishing dependency benefits under this paragraph (2) shall remain fixed for the duration of the individual's benefit year and shall not be increased or decreased unless it is determined by the division that the individual wrongfully claimed dependency benefits as a result of false or fraudulent representation.

(D) Notwithstanding the provisions of any other law, the division shall use every available administrative means to insure that dependency benefits are paid only to individuals who meet the requirements of this paragraph (2). These administrative actions may include, but shall not be limited to, the following:

(i) All married individuals claiming dependents under this paragraph (2) shall be required to provide the social security number of the individual's spouse. If the individual indicates that the spouse is unemployed, the division shall match the social security number of the spouse against available wage records to determine whether earnings were reported on the last quarterly earnings report filed by employers under R.S. 43:21-14 of this chapter. If earnings were reported, the division shall contact in writing the last employer to determine whether the spouse is currently employed.

(ii) Where a child is claimed as a dependent by an individual under this paragraph (2), the individual shall be required to provide to the division the most recent federal income tax return filed by the individual to assist the division in verifying the claim.

(3) For the purposes of this subsection (c), the "Statewide average weekly remuneration paid to workers by employers" shall be computed and determined by the Commissioner of Labor on or before September 1 of each year on the basis of one-fifty-second of the total remuneration reported for the preceding calendar year by employers subject to this chapter, divided by the average of the number of workers reported by such employers, and shall be effective as to benefit determinations in the calendar year following such computation and determination.

(d) Maximum total benefits.

(1) (A) With respect to an individual to whom benefits shall be payable for benefit years commencing on or after January 1, 1975 and prior to July 1, 1986, as provided in this section, such individual shall be entitled to receive, under each successive benefit determination relating to each of his base year employers, a total amount of benefits equal to three-quarters of his base weeks from the employer in question multiplied by his weekly benefit rate; but the amount of benefits thus resulting under any such determination made with respect to any employer shall be adjusted to the next lower multiple of $1.00 if not already a multiple thereof.

(B)(i) With respect to an individual for whom benefits shall be payable for benefit years commencing on or after July 1, 1986, as provided in this section, the individual shall be entitled to receive a total amount of benefits equal to three-quarters of the individual's base weeks with all employers in the base year multiplied by the individual's weekly benefit rate; but the amount of benefits thus resulting under that determination shall be adjusted to the next lower multiple of $1.00 if not already a multiple thereof.

(ii) Except that benefits paid to an individual for benefit years commencing on or after July 1, 1986 shall be charged against the accounts of the individual's base year employers in the following manner:

Each week of benefits paid to an eligible individual shall be charged against each base year employer's account in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during the base year.

(iii) Wages earned during a base year, which had previously been used to establish a benefit year commencing prior to July 1,

1986, may also be used to establish benefit years commencing on or after July 1, 1986 but prior to October 1, 1987. No employer's account shall be charged for any benefits payable based on base year wages which may be used to establish entitlement under the provisions of this subparagraph (iii).

(2) No such individual shall be entitled to receive benefits under this chapter (R.S.43:21-1 et seq.) in excess of 26 times his weekly benefit rate in any benefit year under either of subsections (c) and (f) of section 43:21-4 of this chapter (R.S.43:21-1 et seq.). In the event that any individual qualifies for benefits under both of said subsections during any benefit year, the maximum total amount of benefits payable under said subsections combined to such individual during the benefit year shall be one and one-half times the maximum amount of benefits payable under one of said subsections.

(3) (Deleted by amendment, P.L.1984, c.24.)

7. R.S.43:21-4 is amended to read as follows:

Benefit eligibility conditions.

43:21-4. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if:

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office, as directed by the division in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided that no such regulation shall conflict with subsection (a) of R.S.43:21-3.

(b) The individual has made a claim for benefits in accordance with the provisions of subsection (a) of R.S.43:21-6.

(c) (1) The individual is able to work, and is available for work, and has demonstrated to be actively seeking work, except as hereinafter provided in this subsection or in subsection (f) of this section.

(2) The director may modify the requirement of actively seeking work if such modification of this requirement is warranted by economic conditions.

(3) No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because the individual is on

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vacation, without pay, during said week, if said vacation is not the result of the individual's own action as distinguished from any collective action of a collective bargaining agent or other action beyond the individual's control.

(4) (A) Subject to such limitations and conditions as the division may prescribe, an individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible because the individual is attending a training program approved for the individual by the division to enhance the individual's employment opportunities or because the individual failed or refused to accept work while attending such program.

(B) For the purpose of this paragraph (4), any training program shall be regarded as approved by the division for the individual if the program and the individual meet the following requirements:

(i) The training is for a labor demand occupation and is likely to enhance the individual's marketable skills and earning power;

(ii) The training is provided by a competent and reliable private or public entity approved by the Commissioner of Labor pursuant to the provisions of section 8 of the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

(iii) The individual can reasonably be expected to complete the program, either during or after the period of benefits;

(iv) The training does not include on the job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives benefits; and

(v) The individual enrolls in vocational training, remedial education or a combination of both on a full-time basis.

(C) If the requirements of subparagraph (B) of this paragraph (4) are met, the division shall not withhold approval of the training program for the individual for any of the following reasons:

(i) The training includes remedial basic skills education necessary for the individual to successfully complete the vocational component of the training;

(ii) The training is provided in connection with a program under which the individual may obtain a college degree, including a post-graduate degree;

(iii) The length of the training period under the program; or

(iv) The lack of a prior guarantee of employment upon completion of the training.

(D) For the purpose of this paragraph (4), "labor demand occupation" means an occupation for which there is or is likely to be

an excess of demand over supply for adequately trained workers, including, but not limited to, an occupation designated as a labor demand occupation by the New Jersey Occupational Information Coordinating Committee pursuant to the provisions of subsection h. of section 1 of P.L.1987, c.457 (C.34:1A-76) or section 12 of P.L.1992, c.43 (C.34:1A-78).

(5) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason of the individual's attendance before a court in response to a summons for service on a jury.

(6) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason of the individual's attendance at the funeral of an immediate family member, provided that the duration of the attendance does not extend beyond a two-day period.

For purposes of this paragraph, "immediate family member" includes any of the following individuals: father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, foster child, sister or brother of the unemployed individual and any relatives of the unemployed individual residing in the unemployed individual's household.

(7) No individual, who is otherwise eligible, shall be deemed ineligible or unavailable for work with respect to any week because, during that week, the individual fails or refuses to accept work while the individual is participating on a full-time basis in self-employment assistance activities authorized by the division, whether or not the individual is receiving a self-employment allowance during that week.

(8) Any individual who is determined to be likely to exhaust regular benefits and need reemployment services based on information obtained by the worker profiling system shall not be eligible to receive benefits if the individual fails to participate in available reemployment services to which the individual is referred by the division or in similar services, unless the division determines that:

(A) The individual has completed the reemployment services; or

(B) There is justifiable cause for the failure to participate, which shall include participation in employment and training, self-employment assistance activities or other activities authorized by the division to assist reemployment or enhance the marketable skills and earning power of the individual and which shall include any other circumstance indicated pursuant to this

section in which an individual is not required to be available for and actively seeking work to receive benefits.

(d) The individual has been totally or partially unemployed for a waiting period of one week in the benefit year which includes that week. When benefits become payable with respect to the third consecutive week next following the waiting period, the individual shall be eligible to receive benefits as appropriate with respect to the waiting period. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) If benefits have been paid, or are payable with respect thereto; provided that the requirements of this paragraph shall be waived with respect to any benefits paid or payable for a waiting period as provided in this subsection;

(2) If it has constituted a waiting period week under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.);

(3) Unless the individual fulfills the requirements of subsections (a) and (c) of this section;

(4) If with respect thereto, claimant was disqualified for benefits in accordance with the provisions of subsection (d) of R.S.43:21-5.

(e) (1) With respect to a base year as defined in subsection (c) of R.S.43:21-19, the individual has established at least 20 base weeks as defined in subsection (t) of R.S.43:21-19, or, in those instances in which the individual has not established 20 base weeks, except as otherwise provided in paragraph (3) of this subsection, for benefit years commencing on or after October 1, 1984 and before January 1, 1996, the individual has earned 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S.43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, or more in the individual's base year.

(2) With respect to benefit years commencing on or after January 1, 1996, except as otherwise provided in paragraph (3) of this subsection, the individual has, during his base year as defined in subsection (c) of R.S.43:21-19:

(A) Established at least 20 base weeks as defined in paragraph (2) of subsection (t) of R.S.43:21-19; or

(B) If the individual has not met the requirements of subparagraph (A) of this paragraph (2), earned remuneration not less than an amount 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S.43:21-3(c), which amount shall be adjusted to the next higher multiple of $100.00 if not already a multiple thereof; or

(C) If the individual has not met the requirements of subparagraph (A) or (B) of this paragraph (2), earned remuneration not less than an amount 1,000 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $100.00 if not already a multiple thereof.

(3) Notwithstanding the provisions of paragraph (1) or paragraph (2) of this subsection, an unemployed individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops shall, subject to the limitations of subsection (i) of R.S.43:21-19, be eligible to receive benefits if during his base year, as defined in subsection (c) of R.S.43:21-19, the individual:

(A) Has established at least 20 base weeks as defined in paragraph (1) of subsection (t) of R.S.43:21-19; or

(B) Has earned 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S.43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, or more; or

(C) Has performed at least 770 hours of service in the production and harvesting of agricultural crops.

(4) The individual applying for benefits in any successive benefit year has earned at least six times his previous weekly benefit amount and has had four weeks of employment since the beginning of the immediately preceding benefit year. This provision shall be in addition to the earnings requirements specified in paragraph (1), (2), or (3) of this subsection, as applicable.

(f) (1) The individual has suffered any accident or sickness not compensable under the workers' compensation law, R.S.34:15-1 et seq. and resulting in the individual's total disability to perform any work for remuneration, and would be eligible to receive benefits under this chapter (R.S.43:21-1 et seq.) (without regard to the maximum amount of benefits payable during any benefit year) except for the inability to work and has furnished notice and proof of claim to the division, in accordance with its rules and regulations, and payment is not precluded by the provisions of R.S.43:21-3(d); provided, however, that benefits paid under this subsection (f) shall be computed on the basis of only those base year wages earned by the claimant as a "covered individual," as defined in R.S.43:21-27(b); provided further that no benefits shall be payable under this subsection to any individual:

(A) For any period during which such individual is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist or chiropractor;

(B) (Deleted by amendment, P.L.1980, c.90.)

(C) For any period of disability due to willfully or intentionally self-inflicted injury, or to injuries sustained in the perpetration by the individual of a crime of the first, second or third degree;

(D) For any week with respect to which or a part of which the individual has received or is seeking benefits under any unemployment compensation or disability benefits law of any other state or of the United States; provided that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such benefits, this disqualification shall not apply;

(E) For any week with respect to which or part of which the individual has received or is seeking disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.);

(F) For any period of disability commencing while such individual is a "covered individual," as defined in subsection (b) of section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27).

(2) Benefit payments under this subsection shall be charged to and paid from the State disability benefits fund established by the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and shall not be charged to any employer account in computing any employer's experience rate for contributions payable under this chapter.

(g) Benefits based on service in employment defined in subparagraphs (B) and (C) of R.S.43:21-19(i)(1) shall be payable in the same amount and on the terms and subject to the same conditions as benefits payable on the basis of other service subject to the "unemployment compensation law"; except that, notwithstanding any other provisions of the "unemployment compensation law":

(1) With respect to service performed after December 31, 1977, in an instructional research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) With respect to weeks of unemployment beginning after September 3, 1982, on the basis of service performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual under this paragraph (2) and the individual was not offered an opportunity to perform these services for the educational institution for the second of any academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause;

(3) With respect to those services described in paragraphs (1) and (2) above, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such period or holiday recess;

(4) With respect to any services described in paragraphs (1) and (2) above, benefits shall not be paid as specified in paragraphs (1), (2), and (3) above to any individual who performed those services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing those services to one or more educational institutions.

(h) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sports seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(i) (1) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services

were performed and was lawfully present for the purpose of performing the services or otherwise was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) (8 U.S.C. §1153 (a)(7)) or section 212(d)(5) (8 U.S.C. §1182 (d)(5)) of the Immigration and Nationality Act (8 U.S.C. §1101 et seq.)); provided that any modifications of the provisions of section 3304(a)(14) of the Federal Unemployment Tax Act (26 U.S.C. §3304 (a)(14)), as provided by Pub.L.94-566, which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under State law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of alien status shall be made except upon a preponderance of the evidence.

(j) Notwithstanding any other provision of this chapter, the director may, to the extent that it may be deemed efficient and economical, provide for consolidated administration by one or more representatives or deputies of claims made pursuant to subsection (f) of this section with those made pursuant to Article III (State plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

8. Section 2 of P.L.1992, c.46 (C.43:21-4.1) is amended to read as follows:

C.43:21-4.1 Worker profiling system; notice to applicant of benefits, services available.

2. a. There is established a worker profiling system for the purpose of determining which new claimants for regular benefits are likely to exhaust benefits and therefore have the greatest need for reemployment services to make a successful transition to new employment. Information obtained from the profiling system shall be used in making referrals for reemployment services and may

be used in making referrals to other services and benefits, but no individual shall be excluded from seeking or receiving reemployment services or other services or benefits because the individual is not among those determined to be likely to exhaust benefits, unless the exclusion is specifically required by federal law. Nor shall an individual be required to participate, as a condition for receiving regular benefits, in any employment and training services because the individual is among those determined to be likely to exhaust benefits, unless that participation by the individual is specifically required by federal law. A characteristic of an individual shall not be used in making a determination regarding whether the individual is likely to exhaust benefits unless it is demonstrated to be an actual indicator of a high likelihood that benefits will be exhausted.

b. The division shall provide each individual who applies for unemployment compensation with an initial interview which includes:

(1) Notice of the benefits and services available pursuant to the provisions of this 1992 amendatory and supplementary act and the provisions of the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et al.), P.L.1992, c.47 (C.43:21-57 et al.) and the "Job Training Partnership Act," Pub.L. 97-300 (29 U.S.C. §1501 et seq.) and of the tuition waivers available pursuant to P.L.1983, c.469 (C.18A:64-13.1 et seq.) and P.L.1983, c.470 (C.18A:64A-23.1 et seq.); and

(2) A review of the individual's rights and responsibilities with respect to the unemployment compensation, including an explanation of the appeal process and of the worker profiling system and its possible impact on the individual.

9. R.S.43:21-19 is amended to read as follows:

Definitions.

43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et seq.), unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid during a calendar year (regardless of when earned) by an employer for employment.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher, except that any year or years throughout which an employer has had no "annual payroll" because of military service shall be deleted from the reckoning; the "average annual payroll" in such case is to be determined on

the basis of the prior three or five calendar years in each of which the employer had an "annual payroll" in the operation of his business, if the employer resumes his business within 12 months after separation, discharge or release from such service, under conditions other than dishonorable, and makes application to have his "average annual payroll" determined on the basis of such deletion within 12 months after he resumes his business; provided, however, that "average annual payroll" solely for the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means the average of the annual payrolls of any employer on which he paid contributions to the State disability benefits fund for the last three or five preceding calendar years, whichever average is higher; provided further that only those wages be included on which employer contributions have been paid on or before January 31 (or the next succeeding day if such January 31 is a Saturday or Sunday) immediately preceding the beginning of the 12-month period for which the employer's contribution rate is computed.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter (R.S.43:21-1 et seq.), with respect to his unemployment.

(c) (1) "Base year" with respect to benefit years commencing on or after July 1, 1986, shall mean the first four of the last five completed calendar quarters immediately preceding an individual's benefit year.

With respect to a benefit year commencing on or after July 1, 1995, if an individual does not have sufficient qualifying weeks or wages in his base year to qualify for benefits, the individual shall have the option of designating that his base year shall be the "alternative base year," which means the last four completed calendar quarters immediately preceding the individual's benefit year; except that, with respect to a benefit year commencing on or after October 1, 1995, if the individual also does not have sufficient qualifying weeks or wages in the last four completed calendar quarters immediately preceding his benefit year to qualify for benefits, "alternative base year" means the last three completed calendar quarters immediately preceding his benefit year and, of the calendar quarter in which the benefit year commences, the portion of the quarter which occurs before the commencing of the benefit year.

The division shall inform the individual of his options under this section as amended by P.L.1995, c.234. If information regarding weeks and wages for the calendar quarter or quarters immediately preceding the benefit year is not available to the division from the regular quarterly reports of wage information

and the division is not able to obtain the information using other means pursuant to State or federal law, the division may base the determination of eligibility for benefits on the affidavit of an individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. A determination of benefits based on an alternative base year shall be adjusted when the quarterly report of wage information from the employer is received if that information causes a change in the determination.

(2) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period defined as a period of disability by section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual who files a claim under the provisions of this paragraph (2) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

(3) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the workers' compensation law (chapter 15 of Title 34 of the Revised Statutes), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the period of disability was not longer than two years, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and if the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period from the time at which the individual becomes unable to work because of the compensable disability until the time that the individual becomes able to resume work and continue work on a permanent basis. An individual who files a claim under the provisions of this paragraph (3) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

(d) "Benefit year" with respect to any individual means the 364 consecutive calendar days beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with subsection (a) of R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of this subsection if (1) he is unemployed for the week in which, or as of which, he files a claim for benefits; and (2) he has fulfilled the conditions imposed by subsection (e) of R.S.43:21-4.

(e) (1) "Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor, and any transaction or exercise of authority by the director of the division thereunder, or under this chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by the division.

(2) "Controller" means the Office of the Assistant Commissioner for Finance and Controller of the Department of Labor, established by the 1982 Reorganization Plan of the Department of Labor.

(f) "Contributions" means the money payments to the State Unemployment Compensation Fund, required by R.S.43:21-7. "Payments in lieu of contributions" means the money payments to the State Unemployment Compensation Fund by employers electing or required to make payments in lieu of contributions, as provided in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

(g) "Employing unit" means the State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any individual or type of organization, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employ-

ing unit for all the purposes of this chapter (R.S.43:21-1 et seq.), whether such individual was hired or paid directly by such employing unit or by such agent or employee; provided the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which in either the current or the preceding calendar year paid remuneration for employment in the amount of $1,000.00 or more;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets thereof, of another which, at the time of such acquisition, was an employer subject to this chapter (R.S.43:21-1 et seq.);

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit or interest, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit for which service in employment as defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed after December 31, 1977;

(6) Any employing unit for which service in employment as defined in R.S.43:21-19 (i) (1) (C) is performed after December 31, 1971 and which in either the current or the preceding calendar year paid remuneration for employment in the amount of $1,000.00 or more;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection (h) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of the "unemployment compensation law" for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter (R.S.43:21-1 et seq.);

(8) (Deleted by amendment; P.L.1977, c.307.)

(9) (Deleted by amendment; P.L.1977, c.307.)

(10) (Deleted by amendment; P.L.1977, c.307.)

(11) Any employing unit subject to the provisions of the Federal Unemployment Tax Act within either the current or the preceding calendar year, except for employment hereinafter excluded under paragraph (7) of subsection (i) of this section;

(12) Any employing unit for which agricultural labor in employment as defined in R.S.43:21-19 (i) (1) (I) is performed after December 31, 1977;

(13) Any employing unit for which domestic service in employment as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31, 1977;

(14) Any employing unit which having become an employer under the "unemployment compensation law" (R.S.43:21-1 et seq.), has not under R.S.43:21-8 ceased to be an employer; or for the effective period of its election pursuant to R.S.43:21-8, any other employing unit which has elected to become fully subject to this chapter (R.S.43:21-1 et seq.).

(i) (1) "Employment" means:

(A) Any service performed prior to January 1, 1972, which was employment as defined in the "unemployment compensation law" (R.S.43:21-1 et seq.) prior to such date, and, subject to the other provisions of this subsection, service performed on or after January 1, 1972, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(B) (i) Service performed after December 31, 1971 by an individual in the employ of this State or any of its instrumentalities or in the employ of this State and one or more other states or their instrumentalities for a hospital or institution of higher education located in this State, if such service is not excluded from "employment" under paragraph (D) below.

(ii) Service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of the foregoing and one or more other states or political subdivisions, if such service is not excluded from "employment" under paragraph (D) below.

(C) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization, which is excluded from "employment" as defined in the Federal Unemployment Tax Act, solely by reason of section

3306 (c) (8) of that act, if such service is not excluded from "employment" under paragraph (D) below.

(D) For the purposes of paragraphs (B) and (C), the term "employment" does not apply to services performed

(i) In the employ of (I) a church or convention or association of churches, or (II) an organization, or school which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education, and after December 31, 1977, in the employ of a governmental entity referred to in R.S.43:21-19 (i) (1) (B), if such service is performed by an individual in the exercise of duties

(aa) as an elected official;

(bb) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(cc) as a member of the State National Guard or Air National Guard;

(dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(ee) in a position which, under or pursuant to the laws of this State, is designated as a major nontenured policy making or advisory position, or a policy making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or

(iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market;

(v) By an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program assisted in whole or in part by any federal agency or an agency of a state or political subdivision thereof; or

(vi) Prior to January 1, 1978, for a hospital in a State prison or other State correctional institution by an inmate of the prison or

correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(E) The term "employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands, after December 31, 1971 and prior to January 1 of the year following the year in which the U.S. Secretary of Labor approves the unemployment compensation law of the Virgin Islands, under section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C. §3304 (a)) in the employ of an American employer (other than the service which is deemed employment under the provisions of R.S.43:21-19 (i) (2) or (5) of the parallel provisions of another state's unemployment compensation law), if

(i) The American employer's principal place of business in the United States is located in this State; or

(ii) The American employer has no place of business in the United States, but (I) the American employer is an individual who is a resident of this State; or (II) the American employer is a corporation which is organized under the laws of this State; or (III) the American employer is a partnership or trust and the number of partners or trustees who are residents of this State is greater than the number who are residents of another state; or

(iii) None of the criteria of divisions (i) and (ii) of this subparagraph (E) is met but the American employer has elected to become an employer subject to the "unemployment compensation law" (R.S.43:21-1 et seq.) in this State, or the American employer having failed to elect to become an employer in any state, the individual has filed a claim for benefits, based on such service, under the law of this State;

(iv) An "American employer," for the purposes of this subparagraph (E), means (I) an individual who is a resident of the United States; or (II) a partnership, if two-thirds or more of the partners are residents of the United States; or (III) a trust, if all the trustees are residents of the United States; or (IV) a corporation organized under the laws of the United States or of any state.

(F) Notwithstanding R.S.43:21-19 (i) (2), all service performed after January 1, 1972 by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this State.

(G) Notwithstanding any other provision of this subsection, service in this State with respect to which the taxes required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the "unemployment compensation law" (R.S.43:21-1 et seq.).

(H) The term "United States" when used in a geographical sense in subsection R.S.43:21-19 (i) includes the states, the District of Columbia, the Commonwealth of Puerto Rico and, effective on the day after the day on which the U.S. Secretary of Labor approves for the first time under section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C §3304 (a)) an unemployment compensation law submitted to the Secretary by the Virgin Islands for such approval, the Virgin Islands.

(I) (i) Service performed after December 31, 1977 in agricultural labor in a calendar year for an entity which is an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such year; or for an employing unit which

(aa) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000.00 or more for individuals employed in agricultural labor, or

(bb) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time.

(ii) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other entity shall be treated as an employee of such crew leader

(aa) if such crew leader holds a certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act, Pub.L.97-470 (29 U.S.C.§1801 et seq.), or P.L.1971, c.192 (C.34:8A-7 et seq.); or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(bb) if such individual is not an employee of such other person for whom services were performed.

(iii) For the purposes of subparagraph (I) (i) in the case of any individual who is furnished by a crew leader to perform service in

agricultural labor or any other entity and who is not treated as an employee of such crew leader under (I) (ii)

(aa) such other entity and not the crew leader shall be treated as the employer of such individual; and

(bb) such other entity shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other entity) for the service in agricultural labor performed for such other entity.

(iv) For the purpose of subparagraph (I) (i), the term "crew leader" means an individual who

(aa) furnishes individuals to perform service in agricultural labor for any other entity;

(bb) pays (either on his own behalf or on behalf of such other entity) the individuals so furnished by him for the service in agricultural labor performed by them; and

(cc) has not entered into a written agreement with such other entity under which such individual is designated as an employee of such other entity.

(J) Domestic service after December 31, 1977 performed in the private home of an employing unit which paid cash remuneration of $1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year.

(2) The term "employment" shall include an individual's entire service performed within or both within and without this State if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(4) Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal

government, shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if the individual performing such services is a resident of this State and the employing unit for whom such services are performed files with the division an election that the entire service of such individual shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.).

(5) Service shall be deemed to be localized within a state if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) unless and until it is shown to the satisfaction of the division that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(7) Provided that such services are also exempt under the Federal Unemployment Tax Act, as amended, or that contributions with respect to such services are not required to be paid into a state unemployment fund as a condition for a tax offset credit against the tax imposed by the Federal Unemployment Tax Act, as amended, the term "employment" shall not include:

(A) Agricultural labor performed prior to January 1, 1978; and after December 31, 1977, only if performed in a calendar year for an entity which is not an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such calendar year; or unless performed for an employing unit which

(i) during a calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000.00 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural

labor 10 or more individuals, regardless of whether they were employed at the same moment in time;

(B) Domestic service in a private home performed prior to January 1, 1978; and after December 31, 1977, unless performed in the private home of an employing unit which paid cash remuneration of $1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year;

(C) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(D) Service performed prior to January 1, 1978, in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions, except as provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ of the South Jersey Port Corporation or its successors;

(E) Service performed in the employ of any other state or its political subdivisions or of an instrumentality of any other state or states or their political subdivisions to the extent that such instrumentality is with respect to such service exempt under the Constitution of the United States from the tax imposed under the Federal Unemployment Tax Act, as amended, except as provided in R.S.43:21-19 (i) (1) (B) above;

(F) Service performed in the employ of the United States Government or of any instrumentality of the United States except under the Constitution of the United States from the contributions imposed by the "unemployment compensation law," except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Secretary of Labor of the United States under section 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C. §3304), the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in R.S.43:21-14 (f) with respect to contributions erroneously paid to or collected by the division;

(G) Services performed in the employ of fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

(H) Services performed as a member of the board of directors, a board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or of the United States, where such services do not constitute the principal employment of the individual;

(I) Service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(J) Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;

(K) Services performed by real estate salesmen or brokers who are compensated wholly on a commission basis;

(L) Services performed in the employ of any veterans' organization chartered by Act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, inures to the benefit of any private shareholder or individual;

(M) Service performed for or in behalf of the owner or operator of any theatre, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band," entertainer, vaudeville artist, actor, actress, singer or other entertainer;

(N) Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than $1,000.00 in a calendar year;

(O) Services performed in the sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses;

(P) Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;

(Q) Service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and (ii) the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(R) Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organizations Immunities Act (22 U.S.C.§288 et seq.);

(S) Service covered by an election duly approved by an agency charged with the administration of any other state or federal unemployment compensation or employment security law, in accordance with an arrangement pursuant to R.S.43:21-21 during the effective period of such election;

(T) Service performed in the employ of a school, college, or university if such service is performed (i) by a student enrolled at such school, college, or university on a full-time basis in an educational program or completing such educational program leading to a degree at any of the severally recognized levels, or (ii) by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance;

(U) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not

apply to service performed in a program established for or on behalf of an employer or group of employers;

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school approved pursuant to the laws of this State;

(W) Services performed after the effective date of this amendatory act by agents of mutual benefit associations if the compensation to such agents for such services is wholly on a commission basis;

(X) Services performed by operators of motor vehicles weighing 18,000 pounds or more, licensed for commercial use and used for the highway movement of motor freight, who own their equipment or who lease or finance the purchase of their equipment through an entity which is not owned or controlled directly or indirectly by the entity for which the services were performed and who were compensated by receiving a percentage of the gross revenue generated by the transportation move or by a schedule of payment based on the distance and weight of the transportation move;

(Y) Services performed by a certified shorthand reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.), provided to a third party by the reporter who is referred to the third party pursuant to an agreement with another certified shorthand reporter or shorthand reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement;

(Z) Services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, who acts as an independent contractor, is paid on a commission basis, sets his own work schedule and receives no benefits, sick leave, vacation or other leave from the travel agent owning the facilities.

(8) If one-half or more of the services in any pay period performed by an individual for an employing unit constitutes employment, all the services of such individual shall be deemed to be employment; but if more than one-half of the service in any pay period performed by an individual for an employing unit does not constitute employment, then none of the service of such individual shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than

31 consecutive days for which a payment for service is ordinarily made by an employing unit to individuals in its employ.

(9) Services performed by the owner of a limousine franchise (franchisee) shall not be deemed to be employment subject to the "unemployment compensation law," R.S.43:21-1 et seq., with regard to the franchisor if:

(A) The limousine franchisee is incorporated;

(B) The franchisee is subject to regulation by the Interstate Commerce Commission;

(C) The limousine franchise exists pursuant to a written franchise arrangement between the franchisee and the franchisor as defined by section 3 of P.L.1971, c.356 (C.56:10-3); and

(D) The franchisee registers with the Department of Labor and receives an employer registration number.

(j) "Employment office" means a free public employment office, or branch thereof operated by this State or maintained as a part of a State-controlled system of public employment offices.

(k) (Deleted by amendment, P.L.1984, c.24.)

(l) "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands and Puerto Rico.

(m) "Unemployment."

(1) An individual shall be deemed "unemployed" for any week during which:

(A) The individual is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate, including any week during which he is on vacation without pay; provided such vacation is not the result of the individual's voluntary action, except that for benefit years commencing on or after July 1, 1984, an officer of a corporation, or a person who has more than a 5% equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation shall not be deemed to be unemployed in any week during the individual's term of office or ownership in the corporation; or

(B) The individual is eligible for and receiving a self-employment assistance allowance pursuant to the requirements of P.L.1995, c.394 (C.43:21-67 et al.).

(2) The term "remuneration" with respect to any individual for benefit years commencing on or after July 1, 1961, and as used in this subsection, shall include only that part of the same which in any week exceeds 20% of his weekly benefit rate (fractional parts of a dollar omitted) or $5.00, whichever is the larger.

(3) An individual's week of unemployment shall be deemed to commence only after the individual has filed a claim at an unemployment insurance claims office, except as the division may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter (R.S.43:21-1 et seq.), from which administrative expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.

(o) "Wages" means remuneration paid by employers for employment. If a worker receives gratuities regularly in the course of his employment from other than his employer, his "wages" shall also include the gratuities so received, if reported in writing to his employer in accordance with regulations of the division, and if not so reported, his "wages" shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from his employer, whichever is the higher.

(p) "Remuneration" means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash.

(q) "Week" means for benefit years commencing on or after October 1, 1984, the calendar week ending at midnight Saturday, or as the division may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30, or December 31.

(s) "Investment company" means any company as defined in subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

(t) (1) "Base week" for a benefit year commencing on or after October 1, 1985 and before January 1, 1996 means, any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration equal to not less than 20% of the Statewide average weekly remuneration defined in subsection (c) of R.S.43:21-3 which shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof; provided if in any calendar week an individual is in employment with more than one employer, he may in such calendar week establish a base week with respect to each such employer from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (1) during such week.

(2) "Base week," for a benefit year commencing on or after January 1, 1996, means:

(A) Any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration not less than an amount which is 20% of the Statewide average weekly remuneration defined in subsection (c) of R.S.43:21-3 which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this subparagraph (A) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this subparagraph (A) during that week; or

(B) If the individual does not establish in his base year 20 or more base weeks as defined in subparagraph (A) of this paragraph (2), any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this subparagraph (B) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration not less than the amount defined in this subparagraph (B) during that week.

(u) "Average weekly wage" means the amount derived by dividing an individual's total wages received during his base year base weeks (as defined in subsection (t) of this section) from that most recent base year employer with whom he has established at least 20 base weeks, by the number of base weeks in which such wages were earned. In the event that such claimant had no employer in his base year with whom he had established at least 20 base weeks, then such individual's average weekly wage shall be computed as if all of his base week wages were received from one employer and as if all his base weeks of employment had been performed in the employ of one employer.

For the purpose of computing the average weekly wage, the monetary alternative in subparagraph (B) of paragraph (2) of subsection (e) of R.S.43:21-4 shall only apply in those instances where the individual did not have at least 20 base weeks in the base year. For benefit years commencing on or after July 1, 1986,

"average weekly wage" means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be 52.

(v) "Initial determination" means, subject to the provisions of R.S.43:21-6(b)(2) and (3), a determination of benefit rights as measured by an eligible individual's base year employment with a single employer covering all periods of employment with that employer during the base year. For benefit years commencing prior to July 1, 1986, subject to the provisions of R.S.43:21-3(d)(3), if an individual has been in employment in his base year with more than one employer, no benefits shall be paid to that individual under any successive initial determination until his benefit rights have been exhausted under the next preceding initial determination.

(w) "Last date of employment" means the last calendar day in the base year of an individual on which he performed services in employment for a given employer.

(x) "Most recent base year employer" means that employer with whom the individual most recently, in point of time, performed service in employment in the base year.

(y) (1) "Educational institution" means any public or other nonprofit institution (including an institution of higher education):

(A) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor (s) or teacher (s);

(B) Which is approved, licensed or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the State to approve, license or issue a permit for the operation of a school; and

(C) Which offers courses of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(2) "Institution of higher education" means an educational institution which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Is legally authorized in this State to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

(z) "Hospital" means an institution which has been licensed, certified or approved under the law of this State as a hospital.

10. Section 4 of P.L.1992, c.43 (C.34:15D-4) is amended to read as follows:

C.34:15D-4 Workforce Development Partnership Program established.

4. a. The Workforce Development Partnership Program is hereby established in the Department of Labor and shall be administered by the Commissioner of Labor. The purpose of the program is to provide qualified displaced, disadvantaged and employed workers with the employment and training services most likely to provide the greatest opportunity for long-range career advancement with high levels of productivity and earning power. To implement that purpose, the program shall provide those services by means of training grants or customized training services, to the extent that funding for the services is not available from federal or other sources. The commissioner is authorized to expend moneys from the Workforce Development Partnership Fund to provide the training grants or customized training services and provide for each of the following:

(1) The cost of counseling required pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7), to the extent that adequate funding for counseling is not available from federal or other sources;

(2) Reasonable administrative costs not to exceed 10% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any one fiscal year, except for additional start-up administrative costs approved by the Director of the Office of Management and Budget during the first year of the program's operation;

(3) Reasonable costs, not exceeding 0.5% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any one fiscal year, as required by the State Employment

and Training Commission to design criteria and conduct an annual evaluation of the program; and

(4) The cost of reimbursement to individuals for excess contributions pursuant to section 6 of P.L.1992, c.44 (C.34:15D-17).

b. Not more than 10% of the moneys received by any service provider pursuant to this act shall be expended on anything other than direct costs to the provider of providing the employment and training services, which direct costs shall not include any administrative or overhead expense of the provider.

c. Training and employment services shall be provided to a worker who receives counseling pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7) only if the counselor who evaluates the worker pursuant to that section determines that the worker can reasonably be expected to successfully complete the training and education identified in the Employability Development Plan developed pursuant to that section for the worker.

d. All vocational training provided under this act:

(1) Shall be training which is likely to substantially enhance the individual's marketable skills and earning power; and

(2) Shall be training for a labor demand occupation, except for:

(a) Customized training provided to the present employees of a business which the commissioner deems to be in need of the training to prevent job loss caused by obsolete skills, technological change or national or global competition; or

(b) Customized training provided to employees at a facility which is being relocated from another state into New Jersey; or

(c) Entrepreneurial training and technical assistance supported by training grants provided pursuant to subsection b. of section 6 of P.L.1992, c.43 (C.34:15D-6).

e. Not less than 27% of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified displaced workers. Eight percent of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers. Not less than 3% of the total revenues dedicated to the program during any one fiscal year shall be reserved for occupational safety and health training. Beginning July 1, 1994, 5% of the total revenues dedicated to the program during any one fiscal year shall be reserved for and appropriated to the Youth Transitions to Work Partnership created pursuant to P.L.1993, c.268 (C.34:15E-1 et seq.).

f. Funds available under the program shall not be used for activities which induce, encourage or assist: any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers; any replacement of laid off workers by trainees; or any relocation of operations resulting in a loss of employment at a previous workplace located in the State.

g. On-the-job training shall not be funded by the program for any employment found by the commissioner to be of a level of skill and complexity too low to merit training. The duration of on-the-job training funded by the program for any worker shall not exceed the duration indicated by the Specific Vocational Preparation Code developed by the United States Department of Labor for the occupation for which the training is provided and shall in no case exceed 26 weeks. The department shall set the duration of on-the-job training for a worker for less than the indicated maximum, when training for the maximum duration is not warranted because of the level of the individual's previous training, education or work experience. On-the-job training shall not be funded by the program unless it is accompanied, concurrently or otherwise, by whatever amount of classroom-based vocational training, remedial education or both, is deemed appropriate for the worker by the commissioner.

h. Employment and training services funded by the program shall not replace, supplant, compete with or duplicate in any way approved apprenticeship programs.

i. No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

11. Section 6 of P.L.1992, c.43 (C.34:15D-6) is amended to read as follows:

C.34:15D-6 Training grants.

6. a. The Workforce Development Partnership Program shall, to the extent that resources available in the fund permit, provide, for each qualified displaced or disadvantaged worker who undergoes counseling pursuant to section 7 of this act, a training grant to pay for employment and training services which are identified in the Employability Development Plan developed pursuant to that

section for that worker. No training grant made pursuant to this subsection during the first 12 months following July 1, 1992 shall exceed the amount deemed reasonable by the commissioner for the particular training, which amount shall not exceed $4,000, except that the commissioner may permit an additional amount, if he deems it necessary to provide remedial education identified in the Employability Development Plan.

b. The Workforce Development Partnership Program may provide, for any individual who is selected to receive a self-employment assistance allowance pursuant to section 4 of P.L.1995, c.394 (C.43:21-70), a training grant to pay for entrepreneurial training and technical assistance deemed necessary and appropriate by the commissioner to help the individual to become self-employed. A training grant made pursuant to this subsection shall be in an amount deemed reasonable by the commissioner for the particular training, but, during the first 12 months following January 1, 1996, shall not be in an amount which exceeds $400, or, if the grant is for training provided by any public institution of higher education indicated in N.J.S.18A:62-1, shall not be in an amount which exceeds $1,500.

c. The maximum amounts permitted for training grants made pursuant to subsection a. or b. of this section may be adjusted annually thereafter by the commissioner, taking into consideration changes in the prevailing costs of services and the availability of alternative sources of funding for the services. Any cost for employment and training services which exceeds the amount of a training grant shall be the responsibility of the worker receiving the grant. The cost of counseling provided pursuant to section 7 of this act shall not be charged against the training grant. No portion of a training grant may be expended on wage subsidies.

d. If the requirements of this section and sections 4 and 7 of this act are met, a qualified displaced or disadvantaged worker shall not be denied a training grant for any of the following reasons: the training includes remedial education needed by the worker to succeed in the vocational component of the training; the training is part of a program under which the worker may obtain any college degree enhancing the worker's marketable skills and earning power; the length of the training period under the program; or the lack of a prior guarantee of employment upon completion of the training.

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

Approved January 10, 1996.

CHAPTER 395

AN ACT concerning missing children, supplementing Title 52 of the Revised Statutes and Title 18A of the New Jersey Statutes and amending R.S.26:8-24 and 25.

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

C.52:17B-9.8a "Missing child" defined.

1. As used in sections 1 through 3 of this act:

"Missing child" means a person under 18 years of age reported to a law enforcement agency as being abducted, enticed away, taken, missing or a runaway.

C.52:17B-9.8b Notification of school district; records.

2. a. Upon the receipt of a report of a missing child, the Missing Persons Unit established pursuant to section 2 of P.L.1983, c.467 (C.52:17B-9.7) shall notify the superintendent of the school district where the missing child is currently or was most recently enrolled of the disappearance and provide the superintendent with information concerning the identity of the missing child. The unit shall also promptly notify the superintendent if the child is located.

b. When the superintendent of the school district is notified of the report, he shall mark the child's school record. The record shall be marked in such a way that whenever a copy of or information regarding the record is requested, the school district will be aware that the record is that of a missing child. Once the superintendent has been notified by the Missing Persons Unit that the child has been located, the superintendent or his designee shall remove the mark from the record.

c. If a copy of a marked school record is requested, the superintendent shall supply the record to the requestor without alerting him to the fact that the record has been marked, in accordance with the provisions governing access to pupil records pursuant to N.J.S.18A:36-19. After supplying a copy of or information regarding the marked record to the requestor, the superintendent shall immediately report the inquiry or any knowledge as to the whereabouts of the missing child to the unit.

d. Upon notification of a request for a marked school record or other information concerning a missing child, the unit shall commence an investigation of the circumstances surrounding the request, including a search for any record that may exist showing who has legal custody of the child and for any record that may disclose an allegation of child abuse perpetrated against the child or an allegation of domestic violence perpetrated against a member of the child's family.

e. If a search, pursuant to subsection d. of this section, reveals that a child reported missing is in the custody of his legal guardian or if substantiated allegations of child abuse against the child or any order protecting a family member from domestic violence exists, the unit shall continue the investigation without disclosing the whereabouts of the child or his guardian to the person who reported the child missing.

C.52:17B-9.8c Notification of State registrar of vital statistics; records.

3. a. Upon receipt of a report of a missing child, the Missing Persons Unit shall notify the State registrar of vital statistics in the Department of Health of the disappearance and provide him with information concerning the identity of the missing child. The unit shall also promptly notify the State registrar if the child has been located.

b. Upon receiving notification from the unit, the State registrar shall mark the child's birth certificate. The birth certificate shall be marked in such a manner that whenever a copy of or information regarding the birth certificate is requested, the State registrar shall be aware that the certificate is that of a missing child. Once the State registrar has been notified by the Missing Persons Unit that the child has been located, the State or local registrar shall remove the mark from the record.

c. If a copy of the child's birth certificate is requested, the State registrar shall supply the birth certificate to the requestor without alerting him to the fact that the birth certificate has been marked. After supplying a copy of or information regarding the marked birth certificate to the requestor, the State registrar shall immediately report the inquiry or any knowledge as to the whereabouts of the missing child to the unit.

d. Upon notification of a report of a missing child, the State registrar shall request that the local registrar of the district where the child was born mark the child's birth certificate. When a copy of the marked birth certificate is requested, the local registrar shall supply the copy to the requestor without alerting him to the fact that the record has been marked and immediately notify the State registrar of the request.

e. Upon notification of a request for a marked birth certificate or other information concerning a missing child, the Missing Persons Unit shall commence an investigation of the circumstances surrounding the request, including a search for any record that may exist showing who has legal custody of the missing child and for any record that may disclose an allegation of child abuse perpetrated against the child or an allegation of domestic violence perpetrated against a member of the child's family.

f. If a search as described pursuant to subsection e. of this section reveals that a child reported missing is in the custody of his legal guardian or if substantiated allegations of child abuse against the child or any order protecting a family member from domestic violence exists, the unit shall continue the investigation without disclosing the whereabouts of the child or his guardian to the person who reported the child missing.

C.18A:36-25.1 Certified copy of birth certificate required for enrollment in school, records.

4. a. When a child is enrolled in a school district for the first time, the superintendent shall require the child's parent or legal guardian to provide a certified copy of the child's birth certificate or other proof of the child's identity, within 30 days of enrollment. If the child's parent or legal guardian refuses to comply with the requirement in this section, the superintendent shall notify the parent or guardian, in writing, that the matter will be referred to a law enforcement agency if the proof of identity is not provided within 10 days of the notice.

b. When a child transfers from one school district to another, the receiving school district shall obtain the child's school record from the district from which the child has transferred, within 14 days of enrollment. If the record has been marked pursuant to section 2 of P.L.1995, c.395 (C.52:17B-9.8b), the transferring school district shall forward the record to the receiving school district and immediately notify the Missing Persons Unit in the Department of Law and Public Safety established pursuant to section 2 of P.L.1983, c.467 (C.52:17B-9.7).

5. R.S.26:8-24 is amended to read as follows:

Duties, responsibilities of State registrar.

26:8-24. The State registrar shall:

a. Have general supervision throughout the State of the registration of vital records;

b. Have supervisory power over local registrars, deputy local registrars, and subregistrars, in the enforcement of the law relative to the disposal of dead bodies and the registration of vital records;

c. Prepare, print, and supply to all registrars, upon request therefor, all blanks and forms used in registering the records required by said law. No other blanks shall be used than those supplied or approved by the State registrar;

d. Carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory;

e. Arrange, bind, and permanently preserve the certificates of vital records in a systematic manner;

f. Prepare and maintain a comprehensive and continuous index of all vital records registered, the index to be arranged alphabetically;

1. In the case of deaths, by the name of the decedent;

2. In the case of births, by the name of child, if given, and if not, then by the name of father or mother;

3. In the case of marriages, by the surname of the husband and also by the maiden name of the wife; and

g. Mark the birth certificate of a missing child when notified by the Missing Persons Unit in the Department of Law and Public Safety pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c).

6. R.S.26:8-25 is amended to read as follows:

Duties, responsibilities of local registrar.

26:8-25. The local registrar, under the supervision and direction of the State registrar, shall:

a. Strictly and thoroughly enforce the law relative to the disposal of dead bodies and the registration of vital records in his registration district;

b. Supply blank forms of certificates to such persons as require them;

c. Supply to every physician, midwife, and funeral director a copy of the law relative to the registration of vital records and the disposal of dead bodies, together with such rules and regulations as may be prepared by the State registrar relative to their enforcement;

d. Sign his name and insert the date of filing on each certificate of birth, marriage and death;

e. Examine each certificate of birth, marriage, or death when presented for record in order to ascertain whether or not it has

been made in accordance with law and the instructions of the State registrar; and if such certificate is incomplete and unsatisfactory, he shall have the same corrected;

f. At the expense of the municipality make a complete and accurate copy of each birth, marriage, and death certificate registered by him on a form or in a manner prescribed by the State registrar, to be preserved in his office as the local record;

g. On the tenth day of each month or sooner if requested by the department, transmit to the State registrar all original birth, marriage, and death certificates received by him for the preceding month. If no births, marriages or deaths occurred in any month, he shall, on or before the tenth day of the following month, report that fact to the State registrar on a card provided for such purpose;

h. Make an immediate report to the State registrar of any violation of this chapter or chapter 6 of this Title (R.S.26:6-1 et seq.), as well as chapter 1 of Title 37 of the Revised Statutes coming to his knowledge;

i. In the case of any birth in his registration district to parents who are residents of another registration district or of the marriage in his registration district of any couple who obtained the marriage license in another registration district, or of the death in his registration district of any person who at the time of such death was a resident of another registration district notify the registrar of the other registration district, within five days of such birth, marriage, or death, on forms prescribed by the State registrar. All entries relating to cause of death on the original certificate must be entered on the death form sent to the registrar of the other registration district; and

j. Mark the birth certificate of a missing child born in his registration district when notified by the State registrar pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c).

7. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 396

AN ACT concerning certain assessments of certain insurer members of the New Jersey Property-Liability Insurance Guaranty Association and amending P.L.1974, c.17.

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

1. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read as follows:

C.17:30A-8 Association's obligations, powers and duties.

8. a. The association shall:

(1) Be obligated to the extent of the covered claims against an insolvent insurer incurred, in the case of private passenger automobile insurance, prior to or after the determination of insolvency, but before the policy expiration date or the date upon which the insured replaces the policy or causes its cancellation, or in the case of insurance other than private passenger automobile insurance, covered claims against such insolvent insurer incurred prior to or 90 days after the determination of insolvency, or before the policy expiration date if less than 90 days after said determination, or before the insured replaces the policy or causes its cancellation, if he does so within 90 days of the determination, but such obligation shall include only that amount of each covered claim which is less than $300,000.00 and subject to any applicable deductible contained in the policy, except that the $300,000.00 limitation shall not apply to a covered claim arising out of insurance coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits payable under subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable for payment of benefits in an amount not to exceed $75,000.00. Benefits paid in excess of such amount shall be recoverable by the association from the Unsatisfied Claim and Judgment Fund pursuant to the provisions of section 2 of P.L.1977, c.310 (C.39:6-73.1). In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the limits of liability stated in the policy of the insolvent insurer from which the claim arises;

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) Assess member insurers in amounts necessary to pay:

(a) The obligation of the association under paragraph (1) of this subsection;

(b) The expenses of handling covered claims;

(c) The cost of examinations under section 13; and

(d) Other expenses authorized by this act, excluding expenses incurred by the association pursuant to paragraphs (9) and (10) of this subsection.

The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment.

Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed pursuant to this paragraph (3) in any year in an amount greater than 2% of that member insurer's net direct written premiums for the calendar year preceding the assessment.

The association may, subject to the approval of the commissioner, exempt, abate or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. In the event an assessment against a member insurer is exempted, abated, or deferred, in whole or in part, because of the limitations set forth in this section, the amount by which such assessment is exempted, abated, or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as it is permitted by this act. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;

(4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

(5) Notify such persons as the commissioner directs under paragraph (1) of subsection b. of section 10 of P.L.1974, c.17 (C.17:30A-10);

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer;

(7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act;

(8) Make loans to the New Jersey Surplus Lines Insurance Guaranty Fund in accordance with the provisions of the "New Jersey Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et al.);

(9) Assess member insurers in amounts necessary to make loans pursuant to paragraph (10) of this subsection. The estimated assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment with actual assessments adjusted in the succeeding year based on the proportion that the assessed member insurer's net direct written premiums in the year of assessment bears to the net direct written premiums of all member insurers for that year.

(a) For the purposes of this paragraph, "net direct written premiums" shall not include medical malpractice liability insurance premiums paid to member insurers to which an additional charge has been applied for deposit in the New Jersey Medical Malpractice Reinsurance Recovery Fund as provided in the "Medical Malpractice Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the regulations promulgated pursuant thereto.

(b) In the event that the commissioner certifies that loans in amounts less than $160 million per calendar year as provided in paragraph (10) of this subsection will satisfy the current and anticipated financial obligations of the Market Transition Facility, without reference to the amount of funds remaining from the sale of the Market Transition Facility Senior Lien Revenue Bonds, a member insurer, and all of its affiliates as defined in subsection a. of section 1 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced assessment pursuant to this paragraph if the member insurer and all such affiliates: (i) did not issue or renew a policy of private passenger automobile insurance in this State on or after January 1, 1973; (ii) were not assessed as members of the Market Transition Facility as established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii)

had not relinquished voluntarily any expectation they may have had for the repayment of loans made pursuant to paragraph (10) of this subsection, as provided by paragraph (2) of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or settlement agreement approved by any court of competent jurisdiction, on or before the effective date of this 1995 amendatory act. The reduced assessment of such members shall be equal to their proportionate share of the difference between the amount certified by the commissioner and the total of the assessment of all other insurers subject to such assessment. If the amount of such difference is zero or less, the reduced assessment shall be zero;

(10) Make loans in the amount of $160 million per calendar year, beginning in calendar year 1990, or upon certification by the commissioner, as provided by paragraph (b) of subsection (9) of this section, that lesser amounts will satisfy the current and anticipated financial obligations of the Market Transition Facility, such lesser amounts as may be collected pursuant to paragraph (9) of this subsection, to the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except that no loan shall be made pursuant to this paragraph after December 31, 1997. In no event shall member insurers subject to assessments have their financial obligation increased due to reductions granted pursuant to paragraph (9) of this subsection.

b. The association may:

(1) Employ or retain such persons as are necessary to handle claims and perform such other duties of the association;

(2) Borrow funds necessary to effectuate the purpose of this act in accordance with the plan of operation;

(3) Sue or be sued;

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act;

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this act;

(6) Refund to the member insurers in proportion of the contribution of each member insurer that amount by which the assets exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities, as estimated by the board of directors for the coming year.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 397

AN ACT concerning recreation vehicles and amending R.S.39:1-1, R.S.39:3-8 and R.S.39:3-84.

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

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

Words and phrases defined.

39:1-1. 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 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 nor-

mal 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 con-

ditional 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.

2. R.S.39:3-8 is amended to read as follows:

Registration fee for passenger automobile; other vehicles.

39:3-8. The applicant for registration for any passenger automobile manufactured in any model year prior to the 1971 model year shall pay to the director for each registration a fee of $14.00 for each such vehicle having a manufacturer's shipping weight of less than 2,700 pounds, a fee of $23.00 for each such vehicle having a manufacturer's shipping weight of 2,700 pounds or more, but not greater than 3,800 pounds, and a fee of $44.00 for each vehicle having a manufacturer's shipping weight in excess of 3,800 pounds. The applicant for registration for any passenger

automobile manufactured in model year 1971 and thereafter, except as determined hereinafter, shall pay to the director for each registration a fee of $17.00 for each such vehicle having a manufacturer's shipping weight of less than 2,700 pounds, a fee of $28.00 for each such vehicle having a manufacturer's shipping weight of 2,700 pounds or more, but not greater than 3,800 pounds, and a fee of $51.00 for each such vehicle having a manufacturer's shipping weight in excess of 3,800 pounds. The applicant for registration for any 1980 or thereafter model year passenger automobile registered on or after March 1, 1979 shall pay to the director for each registration a fee of $25.00 for each such vehicle having a manufacturer's shipping weight not greater than 3,500 pounds and a fee of $50.00 for each vehicle having a manufacturer's shipping weight in excess of 3,500 pounds. The director shall determine manufacturer's shipping weight and model year for each passenger automobile on the basis of the information contained in the certificate of origin, the application for registration or for renewal of registration, or the records of the division, or any or all of these; and any case in which the manufacturer's shipping weight of any particular passenger automobile is unavailable, or in doubt or dispute, the director may require that such automobile be weighed on a scale designated by him, and such actual weight shall be considered the manufacturer's shipping weight for the purposes of this section; but in all cases the director's determination of the manufacturer's shipping weight of any such automobile shall be final. The applicant for registration for passenger automobile shall also pay to the director the inspection fee fixed in R.S. 39:8-2 in addition to the fees described hereinabove.

The director may also license private utility and house type semitrailers and trailers with a gross load not in excess of 2,000 pounds at a fee of $4.00 per annum and all other such utility and house-type semitrailers and trailers at $9.00 per annum. Application for such registration shall be made on a blank to be furnished by the division and the application shall contain a statement to the effect that the vehicle so registered will not be used for the commercial transportation of goods, wares and merchandise, or for hire.

Except as provided in R.S.39:3-84 for recreation vehicles, no private utility or house type semitrailer or trailer with an outside width of more than 96 inches, a maximum height of 13 feet 6 inches, a maximum length for a single vehicle of more than 35 feet, a maximum length for a semitrailer and its towing vehicle of more than 45 feet, and a maximum length for a trailer and its towing vehicle of more than 50 feet, shall be operated on any

highway in this State, except that a vehicle exceeding the above limitations may be operated when a special permit so to operate is secured in advance from the director. The application for such permit shall be accompanied by a fee fixed by the director. A special permit issued by the director shall be in the possession of the operator of the vehicle for which such permit was issued. In computing any dimensions of a vehicle, for the purposes of this section, there shall not be included in the dimensional limitations safety equipment such as mirrors or lights, provided such appliances do not exceed the overall limitations established by the director by rule or regulation.

3. R.S.39:3-84 is amended to read as follows:

Vehicles; dimensional, weight limitations.

39:3-84. a. The following constitute the maximum dimensional limits for width, height and length for any vehicle or combination of vehicles, including load or contents or any part or portion thereof, found or operated on any public road, street or highway or any public or quasi-public property in this State. Violations shall be enforced pursuant to subsection i. of section 5 of P.L.1950, c.142 (C.39:3-84.3).

The dimensional limitations set forth in this subsection are exclusive of safety and energy conservation devices necessary for safe and efficient operation of a vehicle or combination of vehicles, including load or contents, except that no device excluded herein shall have by its design or use the capability to carry, transport or otherwise be utilized for cargo.

Any rules and regulations authorized to be promulgated pursuant to this subsection shall be consistent with any rules and regulations promulgated by the Secretary of Transportation of the United States of America, and shall be in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). In addition to the other requirements of this subsection and notwithstanding any other provision of this Title, no vehicle or combination of vehicles, including load or contents or any part or portion thereof, except as otherwise provided by this subsection shall be operated in this State, unless by special permit authorized by subsection d. of this section with a dimension, the allowance of which would disqualify the State of New Jersey or any department, agency or governmental subdivision thereof for the purpose of receiving federal highway funds.

As used herein and pursuant to R.S.39:1-1, the term "vehicle" includes, but is not limited to, commercial motor vehicles, trucks, truck tractors, tractors, road tractors, recreation vehicles, or omnibuses. As used herein and pursuant to R.S.39:1-1, the term "combination of vehicles" includes, but is not limited to, vehicles as heretofore designated, when those vehicles are the drawing or power unit of a combination of vehicles and motor-drawn vehicles, such as, but not limited to, trailers, semi-trailers, or other vehicles. As used herein, the term "recycling vehicle" means a commercial motor vehicle used for the collection or transportation of recyclable material; or any truck, trailer or other vehicle approved by the New Jersey Office of Recycling for use by persons engaging in the business of recycling or otherwise providing recycling services in this State; and "recyclable material" means those materials which would otherwise become solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(1) The maximum outside width of any vehicle or combination of vehicles, including load or contents of any part or portion thereof, except as otherwise provided by this subsection, shall be no more than 102 inches; except that the Commissioner of Transportation, after consultation with the Director of the Division of Motor Vehicles and the Superintendent of State Police, may promulgate rules and regulations for those public roads, streets or highways or public or quasi-public property in this State, where it is determined that the interests of public safety and welfare require the maximum outside width be no more than 96 inches.

(2) The maximum height of any vehicle or combination of vehicles, including load or contents of any part or portion thereof, except as otherwise provided by this subsection, shall not exceed 13 feet, 6 inches.

(3) The maximum overall length of any vehicle, as set forth in this subsection, including load or contents or any part or portion thereof, except as otherwise provided by this subsection, shall not exceed 40 feet, except that the overall length of a vehicle, including load or contents or any part or portion thereof, otherwise subject to the provisions of this paragraph shall not exceed 50 feet when transporting poles, pilings, structural units or other articles which cannot be dismembered, dismantled or divided. When a vehicle, subject to this paragraph, is the drawing or power unit of a combination of vehicles, as set forth in this subsection, the overall length of the combination of vehicles,

including load or contents or any part or portion thereof, shall not exceed 62 feet. The provisions of this paragraph shall not apply to omnibuses or to vehicles which are not designed, built or otherwise capable of carrying cargo or loads.

(4) The maximum overall length of a motor-drawn vehicle, as set forth in this subsection, including load or contents or any part or portion thereof, except as otherwise provided by this subsection, shall not exceed 53 feet when operated as part of a combination of vehicles consisting of one motor-drawn vehicle and a drawing or power unit vehicle not designed, built or otherwise capable of carrying cargo or loads, except that a motor-drawn vehicle, the overall length of which is greater than 48 feet and not more than 53 feet, shall be constructed so that the distance between the kingpin of the motor-drawn vehicle and the centerline of its rear axle or rear axle group does not exceed 41 feet; the motor-drawn vehicle shall be equipped with a rear-end protection device of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the motor-drawn vehicle and located not more than 22 inches from the surface as measured with the vehicle empty and on a level surface; the kingpin of the trailer shall not be set back further than 3.5 feet from the front of the semitrailer; the rear overhang, measured from the center of the rear tandem axles to the rear of the semitrailer shall not exceed 35% of the semitrailer's wheelbase; the tractor wheelbase shall not exceed 20 feet between the center of the front axle and the center of the rear single axle or tandem axles; the width of the semitrailer and the distance between the outside edges of the trailer tires shall be 102 inches; and the vehicle shall be equipped with such reflectorization, including but not limited to side-marker reflectorization strips located between the rear axle and the rear of the motor-drawn vehicle, as shall be prescribed by the Division of Motor Vehicles, and as is consistent with any applicable federal standards concerning reflectorization. The overall length of a motor-drawn vehicle otherwise subject to the provisions of this paragraph shall not exceed 63 feet when transporting poles, pilings, structural units or other articles that cannot be dismembered, dismantled or divided. The provisions of this paragraph shall not apply to any vehicle or combination of vehicles designed, built and utilized solely to transport other motor vehicles. The Commissioner of Transportation, after consultation with the Director of the Division of Motor Vehicles and the Superintendent of State

Police, shall promulgate rules and regulations specifying those portions or parts of the National System of Interstate and Defense Highways, Federal-aid Primary System Highways and public roads, streets, highways, toll roads, freeways or parkways in this State where the combination of vehicles as described in this paragraph may lawfully operate. The commissioner shall promulgate rules and regulations within 120 days after the effective date of this amendatory act to identify a network of roads with reasonable access for motor-drawn vehicles greater than 48 feet in length but not more than 53 feet in length. The commissioner shall, in establishing this network, consider all portions of the network for 48 foot long and 102 inch wide motor-drawn vehicles and specify those routes or portions thereof where motor-drawn vehicles greater than 48 feet in length but not more than 53 feet in length shall be excluded from lawful operation for reasons of safety.

(5) No combination of vehicles, including load or contents, consisting of more than two motor-drawn vehicles, as set forth in this subsection, and any other vehicle, shall be found or operated on any public road, street or highway or any public or quasi-public property in this State.

(6) The maximum overall length of a motor-drawn vehicle, as set forth in this section, including load or contents or any part or portion thereof, except as otherwise provided by this subsection, when operated as part of a combination of vehicles consisting of two motor-drawn vehicles and a drawing or power unit vehicle which is not designed, built or otherwise capable of carrying cargo or loads, shall not exceed 28 feet for each motor-drawn vehicle in the combination of vehicles. The provision of this paragraph shall not apply to any vehicle or combination of vehicles designed, built and utilized solely to transport other motor vehicles. The Commissioner of Transportation, after consultation with the Director of the Division of Motor Vehicles and the Superintendent of State Police, shall promulgate rules and regulations specifying those portions or parts of the National System of Interstate and Defense Highways, Federal-aid Primary System Highways and public roads, streets, highways, toll roads, freeways or parkways in this State where combinations of vehicles as described in this paragraph may lawfully operate.

(7) The maximum length and outside width of an omnibus found or operated in this State shall be established by rules and regulations promulgated by the Commissioner of Transportation, after consultation with the Director of the Division of Motor

Vehicles and the Superintendent of State Police. Unless otherwise specified in the aforesaid rules and regulations, the maximum outside width shall be 102 inches; any other dimension established for width in the aforesaid rules and regulations shall be based upon a determination that operation of an omnibus with a width of less than 102 inches, but no less than 96 inches is required in the interest of public safety on those public roads, streets, highways, toll roads, freeways, parkways or the National System of Interstate and Defense Highways in this State specified in the aforesaid rules and regulations, or that operation of an omnibus with a width greater than 102 inches is not unsafe on those public roads, streets, highways, toll roads, freeways, parkways or the National System of Interstate and Defense Highways in this State specified in the aforesaid rules and regulations.

(8) The maximum width and length of farm tractors and traction equipment and farm machinery and implements shall be established by rules and regulations promulgated by the Director of the Division of Motor Vehicles. The operation of the aforesaid vehicles shall be subject to the provisions of R.S.39:3-24 and they shall not be operated on any highway which is part of the National System of Interstate and Defense Highways or on any highway which has been designated a freeway or parkway as provided by law.

(9) The maximum outside width of the cargo or load of a vehicle or combination of vehicles, including farm trucks, loaded with hay or straw shall not exceed 105 1/2 inches, but the maximum outside width of the vehicle or combination of vehicles, including farm trucks, shall otherwise comply with the provisions of paragraph (1) of this subsection. The Commissioner of Transportation, after consultation with the Director of the Division of Motor Vehicles and the Superintendent of State Police, may promulgate rules and regulations establishing a maximum outside width of 102 inches for the aforesaid cargo or load when operating on those highways where a greater width is prohibited by operation of law.

(10) Notwithstanding the provisions of paragraphs (4) and (6) of this subsection pertaining to length, the Director of the Division of Motor Vehicles may adopt rules and regulations specifying maximum length dimensions for any vehicle or combination of vehicles designed, built and utilized solely to transport other motor vehicles.

(11) The provisions of this subsection pertaining to length shall not apply to a vehicle or combination of vehicles or special mobile equipment operated by a public utility, as defined in R.S.48:2-13, when that vehicle or combination of vehicles or special mobile

equipment is used by the public utility in the construction, reconstruction, repair or maintenance of its property or facilities.

(12) The provisions of this subsection pertaining to width shall not apply to a recycling vehicle when that vehicle is used for the collection of recyclable material on a street or highway other than a highway which is designated part of the National System of Interstate and Defense Highways in this State or as a freeway or parkway as provided by law. The maximum outside width of any recycling vehicle so used, including load or contents of any part or portion thereof, shall be no more than 96 inches, except that the width may be up to 105 inches whenever that vehicle is operating at 15 miles per hour or less, and access steps are deployed and recyclable materials are actually being collected.

b. No vehicle or combination of vehicles, including load or contents, found or operated on any public road, street or highway or any public or quasi-public property in this State shall exceed the weight limitations set forth in this Title. Violations shall be enforced pursuant to subsection j. of section 5 of P.L.1950, c.142 (C.39:3-84.3).

Where enforcement of a weight limit provision of this Title requires a measurement of length between axle centers, the distance between axle centers shall be measured to the nearest whole foot or whole inch, whichever is applicable, and when the measurement includes a fractional part of a foot equaling six inches or more or a fractional part of an inch equaling one-half inch or more, the next larger whole foot or whole inch, whichever is applicable, shall be utilized. The term "tandem axle" as used in this act is defined as a combination of consecutive axles, consisting of only two axles, where the distance between axle centers is 40 inches or more but no more than 96 inches.

In addition to the other requirements of this section and notwithstanding any other provision of this Title, no vehicle or combination of vehicles, including load or contents, shall be operated in this State, unless by special permit authorized by this Title, with a gross weight, single or multiple axle weight, or gross weight of two or more consecutive axles, the allowance of which would disqualify the State of New Jersey or any department, agency or governmental subdivision thereof for the purpose of receiving federal highway funds.

(1) The gross weight imposed on the highway or other surface by the wheels of any one axle of a vehicle or combination of vehicles, including load or contents, shall not exceed 22,400 pounds.

For the purpose of this Title the combined gross weight imposed on the highway or other surface by all the wheels of any one axle of a vehicle or combination of vehicles, including load or contents, shall be deemed to mean the total gross weight of all wheels whose axle centers are spaced less than 40 inches apart.

(2) The gross weight imposed on the highway or other surface by all the wheels of all consecutive axles of a vehicle or combination of vehicles, including load or contents, shall not exceed 34,000 pounds where the distance between consecutive axle centers is 40 inches or more, but no more than 96 inches apart.

(3) The combined gross weight imposed on the highway or other surface by all the wheels of consecutive axles of a vehicle or combination of vehicles, including load or contents, shall not exceed 22,400 pounds for each single axle where the distance between consecutive axle centers is more than 96 inches; except that on any highway in this State which is part of, or designated as part of, the National Interstate System, as provided at 23 U.S.C. § 103(e), this single axle limitation shall not apply and in those instances the provisions of this Title as set forth at R.S.39:3-84b.(5) shall apply.

(4) The maximum total gross weight imposed on the highway or other surface by a vehicle or combination of vehicles, including load or contents, shall not exceed 80,000 pounds.

(5) On any highway in this State which is part of, or designated as part of, the National Interstate System, as provided at 23 U.S.C. § 103(e), the total gross weight, in pounds, imposed on the highway or other surface by any group of two or more consecutive axles of a vehicle or combination of vehicles, including load or contents, shall not exceed that listed in the following Table of Maximum Gross Weights, for the respective distance, in feet, between the axle centers of the first and last axles of the group of two or more consecutive axles under consideration; except that in addition to the weights specified in that Table, two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The gross weight of each set of tandem axles shall not exceed 34,000 pounds and the combined gross weight of the two consecutive sets of tandem axles shall not exceed 68,000 pounds.

In all cases the combined gross weight for a vehicle or combination of vehicles, including load or contents, or the maximum gross weight for any axle or combination of axles of the vehicle or combination of vehicles, including load or contents, shall not

exceed that which is permitted pursuant to this paragraph or R.S.39:3-84b.(2); R.S.39:3-84b.(3); or R.S.39:3-84b.(4) of this act, whichever is the lesser allowable gross weight.

TABLE OF MAXIMUM GROSS WEIGHTS

Distance in feet between axle centers of first and last axles of any group of two or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles
3	22400	22400	22400	22400	22400	22400
4	34000	34000	34000	34000	34000	34000
5	34000	34000	34000	34000	34000	34000
6	34000	34000	34000	34000	34000	34000
7	34000	34000	34000	34000	34000	34000
8	34000	34000	34000	34000	34000	34000
9	39000	42500	42500	42500	42500	42500
10	40000	43500	43500	43500	43500	43500
11	41000	44000	44000	44000	44000	44000
12	42000	45000	50000	50000	50000	50000
13	43000	45500	50500	50500	50500	50500
14	44000	46500	51500	51500	51500	51500
15	44800	47000	52000	52000	52000	52000
16	44800	48000	52500	58000	58000	58000
17	44800	48500	53500	58500	58500	58500
18	44800	49500	54000	59000	59000	59000
19	44800	50000	54500	60000	60000	60000
20	44800	51000	55500	60500	66000	66000
21	44800	51500	56000	61000	66500	66500
22	44800	52500	56500	61500	67000	67000
23	44800	53000	57500	62500	68000	68000
24	44800	54000	58000	63000	68500	74000
25	44800	54500	58500	63500	69000	74500
26	44800	55500	59500	64000	69500	75000
27	44800	56000	60000	65000	70000	75500
28	44800	57000	60500	65500	71000	76500
29	44800	57500	61500	66000	71500	77000
30	44800	58500	62000	66500	72000	77500
31	44800	59000	62500	67500	72500	78000
32	44800	60000	63500	68000	73000	78500
33	44800	60500	64000	68500	74000	79000
34	44800	61500	64500	69000	74500	80000
35	44800	62000	65500	70000	75000	80000
36	44800	63000	66000	70500	75500	80000
37	44800	63500	66500	71000	76000	80000

38	44800	64500	67500	71500	77000	80000
39	44800	65000	68000	72500	77500	80000
40	44800	66000	68500	73000	78000	80000
41	44800	66500	69500	73500	78500	80000
42	44800	67200	70000	74000	79000	80000
43	44800	67200	70500	75000	80000	80000
44	44800	67200	71500	75500	80000	80000
45	44800	67200	72000	76000	80000	80000
46	44800	67200	72500	76500	80000	80000
47	44800	67200	73500	77500	80000	80000
48	44800	67200	74000	78000	80000	80000
49	44800	67200	74500	78500	80000	80000
50	44800	67200	75500	79000	80000	80000
51	44800	67200	76000	80000	80000	80000
52	44800	67200	76500	80000	80000	80000
53	44800	67200	77500	80000	80000	80000
54	44800	67200	78000	80000	80000	80000
55	44800	67200	78500	80000	80000	80000
56	44800	67200	79500	80000	80000	80000
57	44800	67200	80000	80000	80000	80000
58	44800	67200	80000	80000	80000	80000
59	44800	67200	80000	80000	80000	80000
60	44800	67200	80000	80000	80000	80000
61	44800	67200	80000	80000	80000	80000
62	44800	67200	80000	80000	80000	80000
63	44800	67200	80000	80000	80000	80000
64	44800	67200	80000	80000	80000	80000
65	44800	67200	80000	80000	80000	80000
66	44800	67200	80000	80000	80000	80000
67	44800	67200	80000	80000	80000	80000
68	44800	67200	80000	80000	80000	80000
69	44800	67200	80000	80000	80000	80000
70	44800	67200	80000	80000	80000	80000

c. The dimensional and weight restrictions set forth herein shall not apply to a combination of vehicles which includes a disabled vehicle or a combination of vehicles being removed from a highway in this State, provided that such oversize or overweight vehicle combination may not travel on the public highways more than five miles from the point where such disablement occurred. If the disablement occurred on a limited access highway, the distance to the nearest exit of such highway shall be added to the five-mile limitation.

d. The Director of the Division of Motor Vehicles may promulgate rules and regulations, including the establishment of fees, for the issuance, at his discretion and if good cause appears, of a special written permit authorizing the applicant:

(1) To operate or move a vehicle or combination of vehicles or special mobile equipment, transporting one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitations set forth in this act. The special written permit issued by the director shall be in the possession of the driver or operator of the vehicle or combination of vehicles or special mobile equipment for which said permit was issued; and

(2) To operate or move a vehicle or combination of vehicles or specialized mobile equipment, transporting a load or cargo that cannot be dismembered, dismantled or divided in order to comply with the dimensional limitations set forth in this act. The special written permit shall be in the possession of the driver or operator of the vehicle or combination of vehicles or special mobile equipment for which the permit was issued; and

(3) Under emergency conditions, to operate or move a type of vehicle or combination of vehicles or special mobile equipment of a size or weight, including load or contents, which exceeds the maximum size or weight limitations specified in this act.

4. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 398

AN ACT concerning the New Jersey Commission on Capital Budgeting and Planning, and amending P.L.1975, c.208.

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

1. Section 2 of P.L.1975, c.208 (C.52:9S-2) is amended to read as follows:

C.52:9S-2 New Jersey Commission on Capital Budgeting and Planning.

2. There is hereby created a New Jersey Commission on Capital Budgeting and Planning. The commission shall consist of 12 members selected as follows: the State Treasurer and any three other members of the Executive Branch designated by the Governor to so serve at his pleasure, two members of the General Assembly, two members of the Senate and four public members from the State at large.

The members from the General Assembly shall be appointed by the Speaker of the General Assembly. The members of the Senate shall be appointed by the President of the Senate. No more than one of the members appointed by the Speaker or President shall be from the same political party. Legislative members shall serve while members of their respective houses for the term for which they have been elected.

Of the four public members two shall be appointed by the Governor with advice and consent of the Senate, no more than one of whom shall be of the same political party, and two by the Legislature, one each by the President of the Senate and the Speaker of the General Assembly, for a term of six years and until their successors are qualified, provided that the members serving on the effective date of this 1995 amendatory act shall continue to serve until the expiration of their appointments. The President of the Senate shall make the first appointment of a public member upon the expiration of the term of the public member first occurring after the effective date of this 1995 amendatory act, and the Speaker of the General Assembly shall make the second appointment of a public member upon the expiration of the term of the public member next occurring after the effective date of this 1995 amendatory act. The public members shall be chosen based upon their experience and expertise in public finance and the capital improvement process. Any vacancy among the public members shall be filled in the same manner as the original appointment, but for the unexpired term only. A member shall be eligible for reappointment.

A chairman of the commission shall be selected annually by the membership of the commission from among the public members.

Members of the commission shall serve without compensation, but public members shall be entitled to reimbursement for expenses incurred in the performance of their duties.

2. Section 3 of P.L.1975, c.208 (C.52:9S-3) is amended to read as follows:

C.52:9S-3 Preparation of State Capital Improvement Plan.

3. a. The commission shall each year prepare a State Capital Improvement Plan containing its proposals for State spending for capital projects, which shall be consistent with the goals and provisions of the State Development and Redevelopment Plan adopted by the State Planning Commission and shall be prepared after consultation with the New Jersey Council of Economic Advisors, created pursuant to P.L.1993, c.149 (C.52:9H-34 et seq.). Copies of

the plan shall be submitted to the Governor and the Legislature no later than December 1 of each year. The plan shall provide:

(1) A detailed list of all capital projects of the State which the commission recommends be undertaken or continued by any State agency in the next three fiscal years, together with information as to the effect of such capital projects on future operating expenses of the State, and with recommendations as to the priority of such capital projects and the means of funding them;

(2) The forecasts of the commission as to the requirements for capital projects of State agencies for the four fiscal years next following such three fiscal years and for such additional periods, if any, as may be necessary or desirable for adequate presentation of particular capital projects, and a schedule for the planning and implementation or construction of such capital projects;

(3) A schedule for the next fiscal year of recommended appropriations of bond funds from issues of bonds previously authorized;

(4) A review of capital projects which have recently been implemented or completed or are in process of implementation or completion;

(5) Recommendations as to the maintenance of physical properties and equipment of State agencies;

(6) Recommendations which the commission deems appropriate as to the use of properties reported in subsection c. of this section;

(7) A report on the State's overall debt. This report shall include information on the outstanding general obligation debt and debt service costs for the prior fiscal year, the current fiscal year, and the estimated amount for the subsequent five fiscal years. In addition, the report shall provide similar information on capital leases and installment obligations;

(8) An assessment of the State's ability to increase its overall debt and a recommendation on the amount of any such increase. In developing this assessment and recommendation, the commission shall consider those criteria used by municipal securities rating services in rating governmental obligations; and

(9) Such other information as the commission deems relevant to the foregoing matters.

b. Each State agency shall no later than August 15 of each year provide the commission with:

(1) A detailed list of capital projects which each State agency seeks to undertake or continue for its purposes in the next three fiscal years, together with information as to the effect of such capital projects on future operating expenses of the State, and with such relevant supporting data as the commission requests;

(2) Forecasts as to the requirements for capital projects of such agency for the four fiscal years next following such three fiscal years and for such additional periods, if any, as may be necessary or desirable for adequate presentation of particular capital projects, and a schedule for the planning and implementation or construction of such capital projects;

(3) A schedule for the next fiscal year of requested appropriations of bond funds from issues of bonds previously authorized;

(4) A report on capital projects which have recently been implemented or completed or are in process of implementation or completion;

(5) A report as to the maintenance of its physical properties and capital equipment;

(6) Such other information as the commission may request.

c. Each State agency shall, when requested, provide the commission with supplemental information in addition to that to be available to the commission under the computerized record keeping of the Department of the Treasury, Bureau of Real Property Management, concerning any real property owned or leased by the agency including its current or future availability for other State uses.

d. A copy of the plan shall also be forwarded to the Division of Budget and Accounting each year upon its completion, and the portion of the plan relating to the first fiscal year thereof shall, to the extent it treats of capital appropriations in the annual budget, constitute the recommendations of the commission with respect to such capital appropriations in the budget for the next fiscal year.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 399

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

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

1. If an employee of a public agency or instrumentality, as defined by subsection a. of section 11 of P.L.1993, c.181, which agency or instrumentality is a county agency or instrumentality that elected to provide the benefits under that P.L.1993, c.181 in accordance with the provisions of section 5 of that act, was at least 61 years of age and had at least 25 years of service credit under the Public Employees' Retirement System on or before January 1, 1994, but was unable to apply to retire under the provisions of that act due to the pendency, during the period allowed thereunder for the making of such an application, of litigation concerning the employment status of the employee, then upon the adoption of a resolution by the governing body of the agency or instrumentality and the filing of a certified copy of that resolution with the Director of the Division of Pensions and Benefits on or before the 60th day following the effective date of this act, the employee shall be allowed to receive the additional retirement benefits provided under section 1 of P.L.1993, c.181 if the employee files an application to retire not later than the 90th day following the effective date of this act and retires under the retirement system not later than the 120th day following that effective date. The employee shall forfeit all tenure rights.

The liability of the retirement system for the additional retirement benefits provided under this section shall be determined, the addition of such liability to the unfunded accrued liability of the employer and payment by the employer of that liability shall be effected, and the assessment to and payment by the employer of the cost of actuarial work shall be made, in accordance with the provisions of section 6 of P.L.1993, c.181.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 400

AN ACT concerning the New Jersey Institute of Technology, supplementing Title 18A of the New Jersey Statutes and repealing parts of the statutory law.

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

C.18A:64E-12 Short title.

1. This act shall be known and may be cited as the "New Jersey Institute of Technology Act of 1995."

C.18A:64E-13 Definitions relative to New Jersey Institute of Technology.

2. As used in this act "New Jersey Institute of Technology," hereinafter referred to as "university," shall, unless the context clearly indicates to the contrary, include and mean the public research university herein designated "New Jersey Institute of Technology" as presently and hereafter constituted, including all departments, colleges, schools, centers, branches, educational and other units and extensions thereof, including, but not limited to, Newark College of Engineering, New Jersey School of Architecture, the College of Science and Liberal Arts, the School of Industrial Management, centers, extension and cooperative education programs, continuing education programs and all other departments of higher education maintained by the educational entity of the university.

C.18A:64E-14 New Jersey Institute of Technology established.

3. There is hereby established a body corporate and politic to be known as the New Jersey Institute of Technology. The exercise by the university of the powers conferred by this act shall be deemed to be public and essential governmental functions necessary for the welfare of the State and the people of New Jersey.

C.18A:64E-15 Declaration of public policy.

4. It is declared to be the public policy of the State that the university shall be given a high degree of self-government and that the governance and conduct of the university shall be free of partisanship.

C.18A:64E-16 Board of trustees continued.

5. The board of trustees of the university is continued and shall have and exercise the powers, authority, rights and privileges and shall be subject to the duties, obligations, and responsibilities set forth in this act.

C.18A:64E-17 Membership of board of trustees; organization.

6. a. Membership of the board of trustees shall consist of the Governor, or his designee, and the Mayor of Newark, as ex officio nonvoting members, and, as voting members, up to 15 citizens of the State appointed by the Governor with the advice and consent of the Senate. The board shall recommend potential new

members to the Governor. The composition and size of the board of trustees shall be determined by the board. The terms of office of appointed members shall be for four years which shall commence on July 1 and expire on June 30. All trustees shall serve after the expiration of their terms until their successors shall have been appointed and qualified. Trustees appointed by the Governor may be removed from the office by the Governor, for cause, after notice and opportunity to be heard. Any vacancy that may occur in the board of trustees shall be filled by appointment in like manner for the unexpired term only.

b. Members of the board as of the effective date of this act shall continue in office until the expiration of their respective terms and the qualification in office of their successors.

c. All voting members of the board of trustees, before undertaking the duties of their office, shall take and subscribe an oath or affirmation to support the Constitution of the State of New Jersey and of the United States, to bear allegiance to the government of the State, and to perform the duties of their office faithfully, impartially and justly, to the best of their ability.

d. Members of the board of trustees shall not receive compensation for their services. Each trustee shall be reimbursed for actual expenses reasonably incurred in the performance of his duties or in rendering service as a member of or on behalf of the board or any committee of the board.

e. The board of trustees shall elect its chairperson from among its voting members annually in July. The board shall select such other officers from among its members as shall be deemed necessary.

f. No voting member of the board of trustees shall be a salaried official of the State of New Jersey, or shall receive remuneration for services from the university. If any member of the board shall become ineligible by reason of the foregoing, a vacancy in his office as trustee shall thereby occur.

g. The board of trustees shall have the power to appoint and regulate the duties, functions, powers and procedures of committees, standing or special, from its members and such advisory committees or bodies as it may deem necessary or conducive to the efficient management and operation of the university, consistent with this act and other applicable statutes.

C.18A:64E-18 Authority, responsibilities of board trustees.

7. The board of trustees of the university shall have general supervision over and be vested with the conduct, control, manage-

ment and administration of the university. It shall have the authority and responsibility to:

a. Adopt, use, and modify, as it deems appropriate, its corporate seal;

b. Determine the policies for the organization, administration and development of the university;

c. Approve the establishment of new educational programs and the discontinuance of existing educational programs at the university consistent with the university's programmatic mission as authorized by the State Board of Higher Education prior to July 1, 1994, or authorized thereafter in accordance with the provisions of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48 (C.18A:3B-1 et seq.);

d. Study the educational and financial needs of the university, annually acquaint the Governor and Legislature with the condition of the university, and prepare and submit an annual request for appropriation to the Division of Budget and Accounting in the Department of the Treasury in accordance with law;

e. Disburse all moneys appropriated to the university by the Legislature and thereafter provided the university and disburse all moneys received from tuition, fees, auxiliary services and other sources;

f. Direct and control expenditures and transfers of funds appropriated and provided by the State through its legislative and executive branches and as to funds received from other sources, direct and control expenditures and transfers in accordance with the terms of any applicable trusts, gifts, bequests, or other special provisions. The university shall annually report changes and additions thereto and transfers thereof to the Director of the Division of Budget and Accounting in the Department of the Treasury. All accounts of the university shall be subject to audit by the State at any time;

g. Appoint and fix the compensation and term of office of a president of the university, who, as the executive officer of the university, shall be assigned that authority and delegated those duties that the board, consistent with law and duly adopted bylaws of the board, determines are in keeping with the purposes of this act and in the best interests of the university;

h. Consistent with the provisions of its budget, this act and any and all controlling collective bargaining agreements, have the power, upon nomination or recommendation of the president, to appoint, remove, promote and transfer all other officers, agents, or employees which may be required to carry out the provisions of this act and prescribe qualifications for those positions, and assign requisite duties

and determine and fix respective compensation for those positions in accordance with duly adopted salary program parameters;

i. Subject to provision for impartial binding dispute resolution through collective bargaining or as provided by university policy and further subject to and limited by any law to the contrary, have final authority to determine controversies and disputes concerning tenure, personnel matters and other issues involving the university arising under Title 18A of the New Jersey Statutes. Any hearings conducted by the board pursuant to this section shall conform to the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The final administrative decision of the board, in any action enabled hereunder, is appealable to the Superior Court, Appellate Division;

j. Borrow money for the needs of the university, as deemed requisite by the board, in such amounts, for such time and upon such terms as may be determined by the board; provided that no such borrowing shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, or be payable out of property or funds, other than moneys appropriated for that purpose, of the State;

k. Purchase, lease, acquire by gifts, condemnation or otherwise, manage, use, control, encumber and dispose of property, or any interest therein, whether real, personal or mixed, including, but not limited to, all buildings and grounds, as necessary or deemed desirable for university purposes.

(1) Employ architects and engineers to plan buildings and other campus facilities; secure bids for the construction of buildings and for the equipment thereof; make contracts for the construction of buildings and for the equipment thereof; and supervise that construction;

(2) 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 which the board may use for or in aid of any of its purposes;

(3) Adopt standing operating rules and procedures for the purchase of all properties, whether real, personal or mixed and including all equipment, materials and supplies and for the purchase of all services. These rules and procedures shall include public competitive bidding, where the sum to be expended exceeds $17,700 or the amount determined by the Governor as provided herein and the awarding of contracts to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the university, price and other factors con-

sidered. This public bidding process shall not be required in those exceptions created by the board of trustees of the university, which shall be in substance those exceptions contained in sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 10). Neither shall public bidding be required for the supplying of any product or the rendering of any service by a public utility, subject to the jurisdiction of the Board of Public Utilities of the State and tariffs and schedules of the charges, made, charged, or exacted by the public utility for any products to be supplied or services to be rendered as are filed with that board. Commencing January 1, 1997 and every two years thereafter, the Governor, in consultation with the Department of the Treasury, shall adjust the threshold amount set forth in this paragraph in direct proportion to the rise or fall of the consumer price index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor. The Governor shall notify the university of the adjustment. The adjustment shall become effective on July 1 of the year in which it is reported.

This subsection shall not prevent the university from having any work done by its own employees, nor shall it apply to repairs, or to the furnishing of materials, supplies or labor or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience requires or the exigency of the university's service will not admit of such advertisement. In such case, the university shall, by resolution passed by an affirmative vote of its board of trustees, declare the exigency or emergency to exist, remediate as practicable and maintain appropriate records as to the reason for such awards, reporting as soon as practicable thereafter to its board of trustees on all such purchases, the amounts and the reasons therefor;

(4) Manage and maintain, and provide for the payment of all charges on and expenses in respect of, all properties utilized by the university;

(5) Invest certain moneys in such obligations, securities and other investments as the board shall deem prudent consistent with the purpose and provisions of this act and in accordance with State and federal law, as follows:

Investment in not for profit corporations or for profit corporations organized and operated pursuant to the provisions of subsection s. of this section may utilize income realized from the sale or licensing of intellectual property as well as the reinvestment of earnings on intellectual property. Investment in not for profit corporations may also utilize income from overhead grant fund recovery as permitted by

federal law as well as other university funds except those specified in paragraph 4 of subsection s. of this section;

(6) Exercise the right of eminent domain, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), to acquire any property or interest therein;

l. Fix and determine tuition rates, and other fees to be paid by students, after reasonable notice and public hearing pursuant to the provisions of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48 (C.18A:3B-1 et seq.);

m. Grant diplomas, certificates or degrees;

n. Enter into contracts and agreements with the State or any of its political subdivisions or with the United States, or with any public body, department or other agency of the State or the United States or with any individual, firm or corporation which are deemed necessary or advisable by the board for carrying out the provisions of this act. A contract or agreement pursuant to this subsection may require a municipality to undertake obligations and duties to be performed subsequent to the expiration of the term of office of the elected governing body of the municipality which initially entered into or approved the contract or agreement, and the obligations and duties so incurred by the municipality shall be binding and of full force and effect, notwithstanding that the term of office of the elected members of the governing body of the municipality which initially entered into or approved that contract or agreement, shall have expired.

Pursuant to this subsection, the board of trustees may procure and enter into contracts for any type of insurance and indemnify against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employees' liability, against any act of any member, officer, employee or servant of the university, whether part-time, full-time, compensated or non-compensated in the performance of the duties of his office or employment or any other insurable risk. In addition, the university shall carry its own liability insurance or maintain an actuarially sound program of self-insurance. Any joint venture, subsidiary corporation, or partnership or other jural entity entered into or owned wholly or in part by the university shall maintain insurance or reserves in such amounts as are determined by an actuary to be sufficient to meet its actual or accrued claims;

o. Adopt bylaws and amend the same as deemed necessary from time to time and make, promulgate and modify at its pleasure such rules, regulations and orders, not inconsistent with the provisions of

this act, as are deemed necessary and proper for the administration and operation of the university and to implement the provisions of this act;

p. Develop an institutional plan and determine the schools, departments, programs and degree levels to be offered by the university consistent with that plan and the university's programmatic mission as authorized by the State Board of Higher Education prior to July 1, 1994, or authorized thereafter in accordance with the provisions of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48 (C.18A: 3B-1 et seq.);

q. Function as a public employer under the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), appointing its chief spokesperson and continuing to conduct all labor negotiations with the participation of the Governor's Office of Employee Relations;

r. Continue to retain independent counsel;

s. Participate as the general partner or as a limited partner, either directly or through a subsidiary corporation created by the university, in limited partnerships, general partnerships, or joint ventures engaged in the development, manufacture, or marketing of products, technology, scientific information or services and create or form for profit or not for profit corporations to engage in such activities; provided that any such participation shall be consistent with the mission of the university and the board shall have determined that such participation is prudent.

(1) The decision to participate in any of the activities described in this subsection, including the creation or formation of for profit or not for profit corporations, shall be articulated in the minutes of the board of trustees meeting in which action was approved. A true copy of the minutes of that meeting shall be delivered to the Governor. No such action shall take effect until 30 days, Saturdays, Sundays and public holidays excepted, after the copy of the minutes shall have been delivered to the Governor. If, within the 30-day period, the Governor returns the minutes of the meeting with a veto of the action taken by the board, the action taken by the board shall be null and void and of no effect.

(2) Any actions taken by the university pursuant to this subsection shall be in conformity with the university's policy on conflicts of interest and the provisions of P.L.1971, c.182 (C.52:13D-12 et seq.), which shall apply to the university, its employees and officers.

(3) Nothing herein shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit or be payable out of property or funds of the State.

(4) Funds directly appropriated to the university from the State or derived from the university's academic programs shall not be utilized by the for profit or not for profit corporations organized and operated pursuant to this subsection in the development, manufacture or marketing of products, technology or scientific information.

(5) Employees of any joint venture, subsidiary corporation, partnership or other jural entity entered into or owned wholly or in part by the university shall not be deemed public employees.

(6) A joint venture, subsidiary corporation, partnership or other jural entity entered into or owned wholly or in part by the university shall not be deemed an instrumentality of the State of New Jersey.

(7) Income realized by the university as a result of participation in the development, manufacture or marketing of products, technology, or scientific information may be invested, reinvested or retained by the board in accordance with the provisions of this act and any other State or federal law for use in furtherance of any of the purposes of this act or of other applicable statutes.

(8) The board shall include in its annual report to the State Treasurer, the operation of all joint ventures, subsidiary corporations, partnerships or other jural entities entered into or owned wholly or in part by the university;

t. Create, operate, or participate in the operation of such auxiliary organizations as permitted by law which the board deems prudent and which are in keeping with the educational and public service mission of the university; and

u. Sue and be sued in its own name.

C.18A:64E-19 Additional powers, duties of board of trustees.

8. The board of trustees, in addition to the other powers and duties provided herein, shall be vested with the right of perpetual succession and shall have and exercise all the powers, rights, and privileges that are incident to the proper governance, conduct and management of the university and the control of its properties and funds and such powers granted to the university or the board or reasonably implied, may be exercised without recourse or reference to any department or agency of the State, except as otherwise provided by this act.

C.18A:64E-20 Appointment of president.

9. The board shall appoint and fix the compensation of a president of the university. The president shall be responsible to the board of trustees and shall have such powers as shall be requisite, for the executive management and conduct of the university in all departments,

branches and divisions, and for the execution and enforcement of bylaws, ordinances, rules, regulations, statutes and orders governing the management, conduct and administration of the university.

C.18A:64E-21 Immunity of trustees, officers.

10. No trustees or officer of the university shall be personally liable for any debt, obligation or other liability of the university or incurred by or on behalf of the university or any constituent unit thereof.

C.18A:64E-22 Board to advise Governor, Legislature.

11. The board of trustees shall advise the Governor and Legislature, in consultation with the Commission on Higher Education and the President's Council and successor bodies, to the end that the facilities and services of the university may be utilized so as to increase the efficiency of the public education system and provide, maintain and improve upon the quality of higher education for the people of the State. The board of trustees shall make recommendations to the Governor and the Legislature respecting the needs for the facilities and services of the university as an educational instrumentality of the State for that purpose.

C.18A:64E-23 University deemed employer.

12. Subject to the provisions of P.L.1969, c.242 (C.18A:66-167 et seq.) and except as otherwise provided by law, the university shall be deemed to be an employer for the purposes of the "Public Employees' Retirement System Act," P.L.1954, c.84 (C.43:15A-1 et seq.) and shall also be deemed to be a "public agency or organization" within the meaning of section 71 of that act (C.43:15A-71). Further, the university's commissioned police officers shall be eligible for participation in and subject to the provisions of the "Police and Firemen's Retirement Systems Act" P.L.1944, c.255 (C.43:16A-1 et seq.) and the university shall be deemed an employer within the meaning of that act.

C.18A:64E-24 Construction of act.

13. Nothing herein contained shall be construed to impair, annul or affect any vested rights, grants, privileges, exemptions, immunities, powers, prerogatives, franchises or advantages heretofore obtained or enjoyed by the university or any constituent unit thereof, under any authority or any act of this State or under any grant, deed, conveyance, transfer, lease, estate, remainder, expectancy, trust, gift, donation, legacy, devise, endowment or fund, all of which are hereby ratified and confirmed except insofar as the same may have expired, be or have been repealed or altered, or may be inconsistent with this

act or with existing provisions of law; subject however, thereto and to all of the rights, obligations, relations, conditions, terms, trust, duties and liabilities to which the same are subject.

C.18A:64E-25 Official acts preserved.

14. The enactment and adoption of this act shall not, of itself, affect the official, operational or organizational status of any officer of the university or any and all outstanding authorizations of any officer, agent or employee, to take specified action, or any and all outstanding commitments or undertakings of or by the university, except and only to the extent that any of the same may be inconsistent with this act.

C.18A:64E-26 Establishment of university; effect on appropriations, employees, etc.

15. Upon the establishment of the body corporate and politic known as the New Jersey Institute of Technology:

a. All appropriations available to the New Jersey Institute of Technology prior to the effective date of this act and to become available shall be transferred to the university by the Director of the Division of Budget and Accounting in the Department of the Treasury and shall be available for the objects and purposes for which appropriated, subject to any terms, restrictions, limitations or other requirements imposed by the State budget;

b. All other grants, gifts, other moneys and property available to the New Jersey Institute of Technology prior to the effective date of this act and to become available to or for the New Jersey Institute of Technology shall be transferred to the university and shall be available for the objects and purposes of the university, subject to any terms, restrictions, limitations or other requirements imposed by State and federal law or otherwise;

c. All employees of the New Jersey Institute of Technology prior to the effective date of this act shall become employees of the university. Nothing in this act shall be construed so as to deprive any person of any right of tenure or under any retirement system or to any pension, disability, social security or similar benefit, to which the person is entitled by law or contractually;

d. All files, papers, records, equipment and other personal property of the New Jersey Institute of Technology shall be transferred to the university; and

e. All orders, rules or regulations theretofore made or promulgated by the New Jersey Institute of Technology shall continue in full force and effect as the orders, rules and regulations of the university until amended or repealed by the university.

C.18A:64E-27 Actions, proceedings not affected.

16. This act shall not affect actions or proceedings, civil or criminal, brought by or against the New Jersey Institute of Technology, but such actions or proceedings may be prosecuted or defended in the same manner and to the same effect by the university as if the foregoing provisions had not taken effect; nor shall any of the foregoing provisions affect any order or regulation made by, or other matters or proceedings before, the New Jersey Institute of Technology, and all such matters or proceedings pending before the New Jersey Institute of Technology on the effective date of this act shall be continued by the university, as if the foregoing provisions had not taken effect.

C.18A:64E-28 References mean New Jersey Institute of Technology.

17. Whenever in any law, rule, regulation, contract, document, judicial or administrative proceeding or otherwise, reference is made to the New Jersey Institute of Technology, the same shall mean and refer to the New Jersey Institute of Technology, herein referred to as "university," established as a public institution of higher education pursuant to the provisions of this act.

C.18A:64E-29 Board of trustees continued.

18. The board of trustees of the university is continued and the provisions of this act shall not alter the term of any member of the board, not specifically abolished herein, lawfully in office as of the effective date of this act, or require the reappointment thereof.

C.18A:64E-30 Credit of State not pledged.

19. No provision of this act shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, of the State of New Jersey.

C.18A:64E-31 Liberal construction.

20. This act, being deemed and declared necessary for the welfare of the State and the people of New Jersey to provide for the development of public higher education in the State and thereby to improve the quality and increase the efficiency of the public system of educational services of the State, shall be liberally construed to effectuate the purposes and intent thereof.

C.18A:64E-32 University allocated to Department of State.

21. In accordance with the provisions of section 27 of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48 (C.18A:3B-1 et seq.), the university is allocated to the Department of State for the purposes of complying with the provisions

of Article V, Section IV, Paragraph 1 of the New Jersey Constitution. Notwithstanding this allocation, the university shall be independent of any supervision or control of the Department of State or any board, commission or officer thereof and the allocation shall not in any way affect the principles of institutional autonomy established by that act and as otherwise enumerated herein.

Repealer.

22. The following sections are hereby repealed:

N.J.S.18A:64E-1 through N.J.S.18A:64E-11.

23. This act shall take effect July 1, 1996.

Approved January 10, 1996.

CHAPTER 401

AN ACT consolidating and reforming the laws regulating boating, supplementing and amending chapter 7 of Title 12 of the Revised Statutes, and amending and repealing various parts of the statutory law.

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

C.12:7-70 Findings, declarations relative to boating.

1. The Legislature finds and declares that numerous laws have been enacted over the past half-century concerning the regulation of boats and vessels; that many of the provisions of these laws are duplicative or outdated; that violations of laws governing the licensing, registration and operation of boats and vessels are currently treated as disorderly persons offenses; and that such offenses are disproportionate with the seriousness of these types of violations, which are comparable to motor vehicle violations.

The Legislature further finds and declares that, while most boaters are knowledgeable and responsible with regard to safety issues, there remain many less experienced, and often younger, boaters who operate vessels on the waters of the State; that, under current law, boaters convicted of boating while intoxicated, or of careless or reckless boating can resume their boating activities upon payment of a fine or expiration of a period of boating privi-

lege suspension; and that many personal watercraft operators can be found on the waters of the State each year with little or no knowledge or understanding of safe vessel operation.

The Legislature therefore determines that it is in the public interest to reorganize and consolidate the various boating laws to facilitate a clearer understanding and increased compliance with these laws; and, that boating laws should be revised so that the penalties imposed for violations of these laws are consistent with those imposed for motor vehicle violations.

The Legislature further determines that there is a need for mandatory boat safety instruction for young and inexperienced boaters, as well as for those who are found guilty of boating while intoxicated or of careless or reckless boating.

C.12:7-71 Definitions.

2. As used in this chapter, unless the context clearly requires a different meaning:

"Commission" means the Boat Regulation Commission established pursuant to section 14 of P.L.1962, c.73 (C.12:7-34.49);

"Department" means the Department of Law and Public Safety;

"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;

"Documented vessel" means a vessel which has a valid Marine Document issued by the United States Coast Guard or any Federal agency successor thereto;

"Length" means measurement from end to end over the deck parallel to the centerline excluding sheer, bowsprits, bumpkins, rudders, outboard motors, brackets or other equipment or appendages;

"Motor" means a temporarily or permanently installed fuel consuming mechanism by which the vessel is or may be propelled, including an electrical motor;

"Operate" means to navigate, use, control or command a vessel;

"Operator" means every person having charge, control, operation or direction of any vessel and the owner of the vessel if the owner is on the vessel at the time it is operated in violation of the law;

"Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of the vessel subject to an interest of another person, reserved or created by agreement and securing

payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

"Personal watercraft" means a personal watercraft as defined by section 1 of P.L.1993, c.299 (C.12:7-62);

"Power vessel" means a vessel temporarily or permanently equipped with machinery for propulsion, including a personal watercraft, and shall not include a vessel propelled wholly by sails or by muscular power;

"Sailboat" means any boat whose sole source of propulsion is the wind;

"Vessel" means a boat or watercraft, other than a sea plane on the water, used or capable of being used as a means of transportation on water; and

"Waters of this State" means all waters within the jurisdiction of this State, both tidal and nontidal, and the marginal sea adjacent to this State to a distance of three nautical miles from the shoreline.

C.12:7-72 Issuance of license to operate power vessel; requirements.

3. a. Upon proper application therefor, the director shall license a person to operate a power vessel on the nontidal waters of this State. A person shall not make any misstatement of fact in an application for a power vessel operator's license.

b. Except as provided pursuant to subsection c. of this section:

(1) A person shall not operate a power vessel on the nontidal waters of this State without being licensed by the director; and

(2) A person under 16 years of age shall not be licensed to operate a power vessel on the nontidal waters of this State.

c. A person is not required to be licensed pursuant to subsection b. of this section when operating a power vessel:

(1) powered solely by a motor of less than one horsepower or an electric motor of 12 volts or less;

(2) that is 12 feet or greater in length and powered by a motor, or combination of motors, of less than 10 horsepower;

(3) while actually competing in an authorized race held under the auspices of a duly incorporated yacht club or racing association in accordance with rules and regulations prescribed by the Division of State Police in the Department of Law and Public Safety and pursuant to a permit duly issued by that division;

(4) pursuant to the provisions of subsection a. of section 2 of P.L.1987, c.453 (C.12:7-61);

(5) if the person is an out-of-State resident, the person's vessel is registered in the person's state of residence and the person has

successfully completed a boat safety course substantially similar to the boat safety course administered pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), provided that the person enters New Jersey with the intent to operate a vessel, and that the person operates the vessel for no more than 30 days between May 1 and September 30 of any year.

d. Except as provided pursuant to subsection c. of this section, a person shall have in his possession a proper license at all times when operating a power vessel on nontidal waters and shall exhibit the license to any law enforcement officer upon request. Failure of a person to exhibit such license upon request shall be presumptive evidence that the person is not a licensed operator.

e. A person who violates the provisions of subsection b. of this section shall be subject to a fine of not more than $500 or to a term of imprisonment not to exceed 60 days, or both, except that:

(1) A person who has never been licensed to operate a power vessel on the nontidal waters of this State or any other jurisdiction shall be subject to a fine of not less than $200 and, in addition, the court shall issue an order to the Director of the Division of Motor Vehicles requiring the director to refuse to issue a license to operate a power vessel on the nontidal waters of this State to that person for a period of not less than 180 days; and

(2) A person who can exhibit to the court before which the person is summoned to answer to the charge a valid operator's license issued to that person which was valid on the day that person was charged shall be subject to a fine of not more than $100, in addition to any reasonable court costs the court may impose. Notwithstanding the provisions of this subsection, the court may, in its discretion, dismiss a charge regarding the failure to exhibit an operator's license brought pursuant to the provisions of this section.

f. The penalties provided for pursuant to subsection e. of this section shall not be applicable in cases where failure to have actual possession of the operator's license is due to an administrative or technical error by the Division of Motor Vehicles.

C.12:7-73 Fee for operator's license.

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 $16 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 color photograph of the licensee. In addition to the fee required

pursuant to subsection a. of this section, the fee for the photograph shall be $2 for each license.

C.12:7-74 Unlawful use, loan of operator's license; fine.

5. a. A person who lends any operator's license required pursuant to section 3 of P.L.1995, c.401 (C.12:7-72) to another person shall be subject to a fine of not less than $25 nor more than $100.

b. A person owning or having control or custody of a power vessel who allows the power vessel to be operated by a nonlicensed operator shall be subject to a fine of not more than $100.

c. A person operating a power vessel who exhibits the operator's license of another shall be subject to a fine of not less than $200 or to a term of imprisonment not to exceed 60 days, or both.

d. A person who exhibits the operator's license of another for purposes of identification in any situation other than as described in subsection c. of this section shall be subject to a fine of not less than $25 nor more than $100.

C.12:7-75 Alteration of motor number, filing of statement.

6. A person who possesses a motor, whether inboard or outboard, the motor number of which has been altered or mutilated, or who comes into possession of such a motor, shall at once file in writing with the Division of State Police a statement setting forth all circumstances in connection with that person's possession of the motor.

C.12:7-76 Careless operation of vessel.

7. a. A person who operates a vessel on the waters of this State, without due caution and circumspection, in a manner that endangers, or is likely to endanger, a person or property shall be guilty of careless operation. Careless operation shall include, but need not be limited to, the loading of a vessel beyond the maximum capacity stated on the United States Coast Guard capacity label or the capacity label of the manufacturer affixed to the vessel.

b. In addition to any other requirements provided by law, a person convicted under subsection a. of this section shall be required after conviction to complete a boat safety course from the list approved by the Superintendent of State Police pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), which shall be completed prior to the restoration of the privilege to operate a vessel which may have been revoked or suspended for a violation of the provisions of this section. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on the waters of this State, or the continuation of revocation until the requirements of this subsection are satisfied.

C.12:7-77 Floatation devices required.

8. A person shall not operate or allow another person to operate a vessel on the waters of this State unless the vessel has a serviceable United States Coast Guard approved personal flotation device for each person on board. Such devices shall be of a type and in sufficient number as required by the United States Coast Guard for a vessel of that class operating on navigable waters. Such devices shall be readily accessible when the vessel is under way or worn as required by regulation.

For the purpose of this section, the term "vessel" does not include surfboards, windsurfers, racing shells, rowing sculls and racing kayaks.

C.12:7-78 Discard of debris; fine.

9. a. A person shall not discard debris from a vessel that is on the waters of this State. A person who violates this section shall be subject to a fine of not less than $200 nor more than $1,000 for each offense.

b. There shall be a rebuttable presumption that the owner of the vessel, if present on the vessel, or, in the owner's absence, the operator of the vessel, is responsible for any violation of this section, if:

(1) Debris of any nature is discarded from the vessel by an occupant of the vessel;

(2) There are two or more occupants in the vessel; and

(3) It cannot be determined which occupant of the vessel is the violator.

C.12:7-79 Stop, lay to by order of officer.

10. A person operating a vessel on the waters of this State shall stop or lay to when so ordered by any law enforcement officer.

C.12:7-80 Summons; arrest.

11. a. A law enforcement officer may serve a summons on any person violating any provision of chapter 7 of Title 12 of the Revised Statutes.

b. A law enforcement officer may arrest any person violating in his presence any provision of chapter 7 of Title 12 of the Revised Statutes instead of issuing a summons pursuant to subsection a. of this section.

c. A law enforcement officer may arrest without a warrant any person who the officer has probable cause to believe has operated a vessel in violation of section 3 of P.L.1952, c.157 (C.12:7-46), regardless of whether the suspected violation occurred in the officer's presence.

C.12:7-81 Jurisdiction of courts.

12. a. The Superior Court and every municipal court shall have jurisdiction to enforce the provisions of chapter 7 of Title 12 of

the Revised Statutes. Each of these courts shall have jurisdiction to receive complaints, order arrests, issue summonses and warrants, admit to bail, and take any action required of a judge in the enforcement of the provisions of chapter 7 of Title 12 of the Revised Statutes within their respective territorial jurisdictions.

b. A court that suspends or revokes a person's privilege to operate a power vessel shall transmit forthwith to the director an order indicating that fact and the ground upon which the privilege was suspended or revoked.

C.12:7-82 Revocation, suspension of privilege to operate power vessel; conditions.

13. a. A court may revoke or suspend the privilege of a person to operate a power vessel if that person has been convicted of homicide in connection with the operation of a motor vehicle or of operating a motor vehicle while under the influence of intoxicating liquor or a narcotic, hallucinogenic or habit producing drug.

b. A court may revoke or suspend the privilege of a person to operate a power vessel if that person has been charged with a homicide in connection with the operation of a motor vehicle or of operating a vessel or motor vehicle while under the influence of intoxicating liquor or a narcotic, hallucinogenic or habit producing drug, pending disposition of that charge, or for any other violation of any of the provisions of chapter 7 of Title 12 of the Revised Statutes or of any rule or regulation prescribed thereunder by the director or the commission.

c. A court shall revoke or suspend the privilege of a person to operate a power vessel if that person has been charged with or convicted of homicide in connection with the operation of a vessel.

d. When a person's privilege to operate a power vessel is revoked or suspended, that person shall have an opportunity to be heard. Attendance of witnesses to such hearing may be compelled by subpoena.

e. Failure of the licensee or any other person possessing the license card to deliver the same to the suspending or revoking court, or the director if so ordered, shall constitute a violation. A court that suspends or revokes a license shall promptly place the license card in the custody of the division, except when the division shall otherwise direct.

f. The division shall have the exclusive power to restore a person's privilege to operate a power vessel and may restore that privilege after the person pays to the director a $50 restoration fee. Unless otherwise specified, whenever a license is revoked pursuant to this section a new license shall not be issued to the

person whose license is revoked for at least six months after the date of such revocation, as determined by the director.

C.12:7-83 Violations, penalties.

14. a. A person whose privilege, including any license or numbering, to operate a power vessel or a vessel that is 12 feet or greater in length has been suspended, revoked or prohibited shall not operate such a vessel on the waters of this State.

b. A person violating subsection a. of this section shall be subject to the following penalties:

(1) upon conviction for a first offense, a fine of $500;

(2) upon conviction for a second offense, a fine of $750 and a term of imprisonment not to exceed five days;

(3) upon conviction for a third offense and each subsequent offense, a fine of $1,000 and a term of imprisonment not to exceed 10 days.

c. In addition to the penalties prescribed in subsection b. of this section, a court shall suspend or extend the suspension of the operating privileges, for a period not to exceed six months, of a person who violates subsection a. of this section.

d. In addition to the penalties prescribed in subsections b. and c. of this section, a court may impose a term of imprisonment not to exceed 45 days, if while operating a vessel in violation of subsection a. of this section a person causes an accident resulting in personal injury to another person.

e. In addition to the penalties prescribed in subsections b., c. and d. of this section, any person violating subsection a. of this section while under a suspension issued pursuant to section 3 of P.L.1952, c.157 (C.12:7-46) upon conviction shall be fined $500, shall have his privilege to operate a vessel suspended for an additional period of not less than one year nor more than two years, and may be imprisoned for a term not to exceed 90 days.

f. Any period of suspension imposed by a court under this section that would continue beyond September 30 of any calendar year shall be interrupted on that date and shall be completed after April 30 of the following year.

C.12:7-84 Payment of fines.

15. All fines imposed under chapter 7 of Title 12 of the Revised Statutes shall be paid to the court imposing the fines. Within 30 days after receipt, the court shall then transmit such fines to the Treasurer of the State of New Jersey for deposit into the State General Fund.

C.12:7-85 Rules, regulations.

16. a. The director, the commission and the Superintendent of State Police, whichever is appropriate and subject to the approval of the Attorney General, may promulgate such rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to effectuate the provisions of P.L.1995, c.401 (C.12:7-70 et al.).

b. All rules and regulations promulgated pursuant to the provisions of chapters 7 and 7C of Title 12 of the Revised Statutes before the effective date of this act which are not inconsistent with the provisions of P.L.1995, c.401 (C.12:7-70 et al.) shall remain in effect until such time as such rules and regulations are changed or otherwise readopted.

17. a. The Superintendent of State Police shall develop, and the superintendent, or his designee, shall administer, a written test for experienced boaters which shall be issued in lieu of completing the boat safety course required pursuant to subsection c. of section 2 of P.L.1987, c.453 (C.12:7-61). Upon successful completion of the test, the person shall be given a certificate which shall fulfill the requirements of subsection c. of section 2 of P.L.1987, c.453 (C.12:7-61). A person who fails the test shall be subject to all requirements of subsection c. of section 2 of P.L.1987, c.453 (C.12:7-61). A person may only take one test pursuant to this subsection.

b. A person who takes a test pursuant to subsection a. of this section shall pay such fee as determined by the superintendent to defray the costs of developing and administering the test and issuing the certificates to persons who successfully complete the test.

c. In addition to all other penalties provided by law, a person who provides false information on an application for a written test issued pursuant to subsection a. of this section shall be subject to a fine of $100.

d. The superintendent shall determine the qualifications for application and all other requirements for applicants under this section.

C.12:7-86 Conditions for operation of personal watercraft without completion of boat safety course.

18. a. A person may operate a personal watercraft without having completed a boat safety course required pursuant to subsection c. of section 2 of P.L.1987, c.453 (C.12:7-61) or a written test administered pursuant to section 17 of P.L.1995, c.401, under the following conditions:

(1) the person operates the personal watercraft within the boundaries of an area designated solely for the operation of personal watercraft by a business engaged in renting personal watercraft for use on the waters of the State;

(2) the area designated for such operation is supervised by a person who is experienced in the operation of personal watercraft and who has successfully completed a boat safety course approved pursuant to section 1 of P.L.1987, c.453 (C.12:7-60); and

(3) the person has successfully completed an instruction course provided by the owner or lessee of the personal watercraft prior to operating the personal watercraft within the designated area.

b. The Superintendent of State Police 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 implement the provisions of this section.

19. Section 5 of P.L.1987, c.269 (C.12:7-23.5) is amended to read as follows:

C.12:7-23.5 Violations, penalties.

5. A person who violates any provision of this act or any regulation adopted pursuant to this act is subject to a fine of not less than $100 for the first offense, $300 for the second offense, and $500 for the third and each subsequent offense.

20. Section 3 of P.L.1962, c.73 (C.12:7-34.38) is amended to read as follows:

C.12:7-34.38 Numbering of vessels required; exemptions.

3. Except as herein otherwise provided, every vessel which is upon the waters of this State shall be numbered in accordance with the provisions of this act, and no person shall operate or give permission to operate any vessel on such waters unless it is so numbered.

A vessel shall not be required to be numbered under this act if it is:

(a) A documented vessel;

(b) Being legally operated and meets all current requirements pursuant to applicable federal law or a federally-approved numbering system of another state; provided that such vessel shall not have been within this State for a period in excess of 180 consecutive days, unless it is in New Jersey for the purpose of wet or dry storage, or for repairs, in which case the actual time for said storage or repair shall not be counted as included within the 180 days aforesaid; provided, however, that a vessel shall be considered to

be based within this State if its owner owns, maintains, leases, or rents space in this State for its storage, mooring, or servicing on other than a transient basis;

(c) From a country other than the United States temporarily using the waters of this State;

(d) A public vessel of the United States, a state or subdivision or agency thereof;

(e) A ship's lifeboat;

(f) Any vessel used exclusively for racing while actually competing in or tuning up for an authorized race held under the auspices of a duly incorporated yacht club or racing association in accordance with the rules and regulations prescribed by the Division of State Police and pursuant to a permit duly issued by that division;

(g) A sailboat or vessel, except for power vessels, used exclusively on small lakes and ponds wholly within private lands;

(h) A non-motorized, inflatable surfboard, racing shell, rowing scull, tender for direct transportation between a vessel and the shore and for no other purpose (dinghy), or vessel, except power vessels, of 12 feet or less in length;

(i) A canoe or kayak; or

(j) A sailboat of 12 feet or less in length.

A sailboat shall be required to be numbered under this act if it is any class of one-design sailboat, in excess of 12 feet in length, which is temporarily or permanently equipped with power installed either inboard or outboard.

21. Section 4 of P.L.1962, c.73 (C.12:7-34.39) is amended to read as follows:

C.12:7-34.39 Application for vessel number; certificate; display.

4. (a) The owner of a vessel required to be numbered in this State shall file an application with the division on forms approved by it. The application shall be signed by the owner and shall be accompanied by the fee prescribed by this act for such vessel. Upon receipt of the application in the approved form and the prescribed fee, the division shall enter the same upon the records of its office and issue to the applicant a pocket-size, laminated or otherwise water resistant certificate of number, which shall state the name and address of the owner, a description of the vessel, its use, and the number assigned.

(b) Except as provided herein, the certificate of number shall be available at all times for inspection on the vessel for which issued whenever such vessel is in operation. The certificate of

number for vessels less than 26 feet in length and leased or rented to another for the latter's noncommercial use of less than 24 hours may be retained on shore by the vessel's owner or his representative at the place from which the vessel departs or returns to the possession of the owner or his representative; provided such substitute as the director may prescribe by regulation is carried on board.

(c) The number assigned to a vessel shall be displayed on each side of the bow thereof, as prescribed by regulations of the division, using letters and numerals not less than three inches in height; except that this provision shall not apply to a one-design class racing sailboat, without power installed either inboard or outboard, which is required to be numbered under section 3 of P.L.1962, c.73 (C.12:7-34.38). No other number shall be displayed on the bow.

22. Section 5 of P.L.1962, c.73 (C.12:7-34.40) is amended to read as follows:

C.12:7-34.40 Rules, regulations concerning numbering system.

5. The division shall make and promulgate rules and regulations concerning the numbering system to be used, which system shall conform as near as possible with any over-all system of identification numbering for vessels which is being used by the United States Government or its agencies. Such rules and regulations shall go into effect immediately upon promulgation.

23. Section 6 of P.L.1962, c.73 (C.12:7-34.41) is amended to read as follows:

C.12:7-34.41 Recording of vessel description, number.

6. The owner of any vessel identified by a number in full force and effect which has been awarded to it pursuant to a then operative federal law or federally-approved numbering system of another State shall record with the division the vessel's description and number prior to using such vessel upon the waters of this State in excess of the 180-day reciprocity period provided for in section 3 of P.L.1962, c.73 (C.12:7-34.38). Such recording shall be in the same manner and pursuant to the same procedure prescribed in section 4 of P.L.1962, c.73 (C.12:7-34.39) except that no additional or substitute number shall be assigned.

24. Section 10 of P.L.1980, c.97 (C.12:7-34.44a) is amended to read as follows:

C.12:7-34.44a Documented vessel; certificate of registration.

10. (a) For the purposes of P.L.1962, c.73 (C.12:7-34.36 et seq.), a documented vessel is based within this State if its owner owns, maintains, leases or rents space in this State for its storage, mooring or servicing on other than a transient basis.

(b) The owner of a documented vessel of 500 gross tons or less based in this State shall file an application for the registration of such vessel with the division on forms approved by it. The application shall be signed by the owner and shall be accompanied by the fee prescribed herein for the vessel. Upon receipt of the application in the approved form and the prescribed fee, the division shall enter the same upon the records of its office and issue to the applicant a pocket-size, laminated or otherwise water resistant certificate of registration which shall state the name and address of the owner, a description of the vessel, and its use.

(c) The certificate of registration shall be available at all times for inspection on the vessel for which issued whenever the vessel is in operation.

(d) The fees for the initial registration of a documented vessel and for each renewal thereof, shall be based on the length of the vessel and shall be the same as provided for in section 12 of P.L.1962, c.73 (C.12:7-34.47) for other vessels of the same length.

25. Section 10 of P.L.1962, c.73 (C.12:7-34.45) is amended to read as follows:

C.12:7-34.45 Change of address of owner; status of vessel.

10. (a) Whenever the owner of a vessel numbered pursuant to P.L.1962, c.73 (C.12:7-34.36 et seq.) changes his address from that shown on his certificate of number, he shall, within one week thereof, notify the division, in writing, of his new address. The division may provide, by regulation, for showing the new address by the alteration of the certificate or for its surrender and replacement by a corrected certificate.

(b) Whenever a vessel numbered under this act is sold, transferred, lost, destroyed or abandoned, the owner of record shall, within one week thereof, notify the division in writing of the change in the status of the vessel. The division may, by regulation, also require the surrender of the certificate of number, if it was not destroyed by the occurrence.

26. Section 11 of P.L.1962, c.73 (C.12:7-34.46) is amended to read as follows:

C.12:7-34.46 Accidents involving vessels.

11. (a) Whenever any vessel upon the waters of this State is involved in an accident, it shall be the duty of the operator, so far as he can do so without serious danger to his own passengers, guests, crew, himself or his vessel, to render to all other persons affected by the accident such assistance as may be necessary in order to save them from or to minimize any danger caused by the accident. He shall also give his name, address, and identifying information regarding his vessel to any person injured and to the owner of any property damaged in the accident.

(b) Whenever an accident involves any vessel subject to this act and results in the death, disappearance, or injury of any person, or in property damage in excess of $500, the operator or operators thereof shall file, with the Division of State Police, a full description of the accident, including such information as that division may, by regulation, require within the times specified in subsection (c) of this section.

(c) A boating accident that occurs on the waters of this State shall be reported to the Division of State Police by the quickest means of communication possible, if the accident has caused the death or the disappearance of any person; any other reportable boating accident that may result in personal injury or property damage shall be reported within 10 days to the Division of State Police.

(d) The report of a boating accident herein required to be made shall not, during any judicial proceeding, be referred to in any way; it shall not be subject to subpoena nor admissible as evidence in any proceeding. Subject to these restrictions, information contained in a boating accident report and any statistical information based thereon will be made available upon request for official purposes to the United States Coast Guard or any federal agency successor thereto.

27. Section 12 of P.L.1962, c.73 (C.12:7-34.47) is amended to read as follows:

C.12:7-34.47 Fees.

12. The fees for the initial numbering of all vessels and for each renewal of the certificate of number issued thereto, unless otherwise provided by law, shall be:

(a) For all vessels less than 16 feet, $6 per year; 16 feet or more but less than 26 feet, $14 per year; 26 feet or more but less

than 40 feet, $26 per year; 40 feet or more but less than 65 feet, $40 per year; 65 feet or more, $125 per year.

(b) (Deleted by amendment.)

(c) Special numbers including up to three duplicates thereof and up to four sets of temporary numbers bearing a number corresponding to the special number, shall be assigned to boat dealers and manufacturers, as provided for under rules and regulations to be promulgated by the division, and such numbers shall be displayed temporarily upon boats being tested, demonstrated, photographed or transported, said display to be as prescribed in the rules and regulations aforementioned.

For each such special number so assigned the fee shall be $75 for one year.

(d) A fee shall not be charged for the numbering of any marine equipment operated and maintained by the State of New Jersey; a county; a municipality; a volunteer first aid, rescue, or emergency squad; a search and rescue unit established within a fire district created pursuant to N.J.S.40A:14-70; or a volunteer fire company created pursuant to N.J.S.40A:14-70.1. This subsection shall apply only to marine equipment which is used exclusively in the performance of the prescribed duties of the governmental entities and organizations described above.

28. Section 6 of P.L.1965, c.206 (C.12:7-34.47a) is amended to read as follows:

C.12:7-34.47a Tax exemption certificate, necessity.

6. (a) Except as provided in subsection (b) hereof, the owner of every power vessel required to be numbered pursuant to this act shall and the owner of every documented power vessel of 500 gross tons or less which is based within this State may annually apply to the division for a tax exemption certificate for the power vessel and pay the fee for such certificate in this act prescribed, which fee shall be in lieu of any assessment or personal property tax imposed by the laws of this State;

(b) The owners of power vessels used solely for their pleasure and recreation shall not be subject to the requirements of subsection (a) hereof and need not apply for a tax exemption certificate.

29. Section 8 of P.L.1965, c.206 (C.12:7-34.47c) is amended to read as follows:

C.12:7-34.47c Application procedure for exemption certificate.

8. (a) Applications for the issuance of a tax exemption certificate shall be made to the division on forms prescribed and supplied by it. Upon application and payment of the fees prescribed, the director shall provide suitable evidence of compliance with this act which shall be displayed in or on each power vessel in a manner to be provided by regulations of the director.

(b) Application for a tax exemption certificate for the tax year 1966 and all subsequent tax years shall be filed with the division on or before June 1 of the tax year or within 30 days of the purchase or acquisition of the power vessel, whichever date is the later.

30. Section 10 of P.L.1965, c.206 (C.12:7-34.47e) is amended to read as follows:

C.12:7-34.47e Director authorized to utilize machine records facilities.

10. The director is authorized to utilize the machine records facilities of other State agencies in the administration of this act.

31. Section 11 of P.L.1965, c.206 (C.12:7-34.47f) is amended to read as follows:

C.12:7-34.47f Governmental fee exception.

11. The director shall issue a tax exemption certificate, without fee, for any power vessel owned, or leased by, the State, a county or municipality or by any instrumentality thereof or by any agency or authority created by this State or by compact between this and any other State or States.

32. Section 12 of P.L.1965, c.206 (C.12:7-34.47g) is amended to read as follows:

C.12:7-34.47g Charitable organization fee exception.

12. The director shall issue a tax exemption certificate, without fee, for any power vessel owned by associations or corporations organized exclusively for charitable purposes.

33. Section 15 of P.L.1965, c.206 (C.12:7-34.47j) is amended to read as follows:

C.12:7-34.47j Rules, regulations.

15. The director is authorized to issue rules and regulations necessary for the administration and enforcement of the tax exemption

certificate provisions of this act, including, but not limited to the establishment of a schedule for the initial issuance of said certificate.

34. Section 14 of P.L.1962, c.73 (C.12:7-34.49) is amended to read as follows:

C.12:7-34.49 Boat Regulation Commission established.

14. (a) There is established within the department a seven-member Boat Regulation Commission which shall consist of the Attorney General as ex officio member and six public members. The public members shall be appointed by the Governor with the advice and consent of the Senate for four-year terms commencing on April 1 of the year of the appointment, except that of those first appointed, two shall be appointed for a term of one year, two for a term of two years, one for a term of three years and one for a term of four years. As far as possible the public members shall be experienced boaters and shall represent the various geographical sections and boating interests of the State. At least one of the public members shall be actively employed in the marine industry.

The chairman shall be designated by the Governor. Each member of the commission shall serve at the pleasure of the Governor during his term and until the successor of the commission member has been appointed and has qualified. Vacancies shall be filled only for the unexpired term.

(b) The members of the commission shall serve without compensation except for the actual expenses incurred while engaged in their duties as members of the commission.

(c) The commission will promulgate rules and regulations, subject to the approval of the Attorney General, not inconsistent with the provisions of this act and including, but not limited to the inspection, operation, equipping, anchorage, racing and safety of vessels upon the waters of this State.

These rules and regulations shall be such as are reasonably necessary for the protection of the health, safety and welfare of the public and for the free and proper use of said waters by any persons or vessels in, on or about such waters. These regulations shall not be inconsistent with regulations issued by the agency or agencies of the United States having jurisdiction with respect to power vessels upon the waters of this State.

The commission shall meet monthly or at the call of the Attorney General or the chairman of the commission or when requested by any three members of the commission. The Attorney General

shall designate a staff from the department to handle administrative matters for the commission.

35. Section 18 of P.L.1962, c.73 (C.12:7-34.53) is amended to read as follows:

C.12:7-34.53 Construction of chapter 7 of title 12; special rules, regulations.

18. No provision of chapter 7 of Title 12 of the Revised Statutes shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of chapter 7 of Title 12, amendments thereto or regulations issued thereunder: Provided, that such ordinance or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of chapter 7 of Title 12, amendments thereto or regulations issued thereunder.

(a) Any subdivision of this State may, at any time, but only after public notice, make formal application to the commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth herein the reasons which make such special rules and regulations necessary or appropriate.

(b) The commission is hereby authorized to make, adopt and promulgate special rules and regulations, subject to the approval of the Attorney General, with reference to the operation of vessels on the waters of this State within the territorial limits of any subdivision of this State.

36. Section 1 of P.L.1952, c.157 (C.12:7-44) is amended to read as follows:

C.12:7-44 Additional powers of department.

1. In addition to the powers conferred upon the Department of Law and Public Safety by the provisions of Title 12 of the Revised Statutes, the department is hereby authorized and empowered to regulate the operation, docking, mooring and anchoring of power vessels operating on the waters of this State.

37. Section 3 of P.L.1952, c.157 (C.12:7-46) is amended to read as follows:

C.12:7-46 Penalties for operating vessel under the influence.

3. a. No person shall operate a vessel on the waters of this State while under the influence of intoxicating liquor, a narcotic, hallucinogenic, or habit-producing drug or with a blood alcohol

concentration of 0.10% or more by weight of alcohol. No person shall permit another who is under the influence of intoxicating liquor, a narcotic, hallucinogenic or habit-producing drug, or who has a blood alcohol concentration of 0.10% by weight of alcohol, to operate any vessel owned by the person or in his custody or control.

As used in this section, "vessel" means a power vessel as defined by section 2 of P.L.1995, c.401 (C.12:7-71) or a vessel which is 12 feet or greater in length.

A person who violates this section shall be subject to the following:

(1) For a first offense, to a fine of not less than $250 nor more than $400; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of 12 months from the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of three months.

(2) For a second offense, to a fine of not less than $500 nor more than $1,000; to the performance of community service for a period of 30 days, in the form and on the terms as the court deems appropriate under the circumstances; and to imprisonment for a term of not less than 48 hours nor more than 90 days, which shall not be suspended or served on probation; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of two years after the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of six months.

(3) For a third or subsequent offense, to a fine of $1,000; to imprisonment for a term of not less than 180 days, except that the court may lower this term for each day not exceeding 90 days during which the person performs community service, in the form and on the terms as the court deems appropriate under the circumstances; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of 10 years from the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of two years.

Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the Director of the Division of Motor Vehicles. In the event that a person convicted under this section is the holder of any out-of-State motor vehicle driver's or vessel operator's license, the court shall not collect the license but shall notify forthwith the Director of the Division of Motor Vehicles, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however,

revoke the nonresident's driving privilege to operate a motor vehicle and the nonresident's privilege to operate a vessel in this State.

b. A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section against a second or subsequent offender. If a second offense occurs more than 10 years after the first offense, the court shall treat a second conviction as a first offense for sentencing purposes and, if a third offense occurs more than 10 years after the second offense, the court shall treat a third conviction as a second offense for sentencing purposes.

c. If a court imposes a term of imprisonment under this section, the person may be sentenced to the county jail, to the workhouse of the county where the offense was committed, or to an inpatient rehabilitation program approved by the Director of the Division of Motor Vehicles and the Director of the Division of Alcoholism and Drug Abuse in the Department of Health.

d. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than three months after the day the person reaches the age of 17 years. If the driving or vessel operating privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this title or Title 39 of the Revised Statutes at the time of any conviction of any offense defined in this section, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement. A second offense shall result in the suspension or postponement of the person's privilege to operate a motor vehicle for six months. A third or subsequent offense shall result in the suspension or postponement of the person's privilege to operate a motor vehicle for two years. The court before whom any person is convicted of or adjudicated delinquent for a violation shall collect forthwith the New Jersey driver's license or licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of

the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle or a vessel during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83). If the person is the holder of a driver's or vessel operator's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving or vessel operating privilege, whichever is appropriate, in this State.

e. In addition to any other requirements provided by law, a person convicted under this section shall satisfy the screening, evaluation, referral program and fee requirements of the Division of Alcoholism's Intoxicated Driving Programs Unit. A fee of $80 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order to defray the costs of the screening, evaluation and referral by the Intoxicated Driving Programs Unit. Failure to satisfy this requirement shall result in the immediate forfeiture of the privilege to operate a vessel on the waters of this State or the continuation of revocation until the requirements are satisfied.

f. In addition to any other requirements provided by law, a person convicted under this section shall be required after conviction to complete a boat safety course from the list approved by the Superintendent of State Police pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), which shall be completed prior to the restoration of the privilege to operate a vessel which may have been revoked or suspended for a violation of the provisions of this section. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on

the waters of this State, or the continuation of revocation until the requirements of this subsection are satisfied.

38. Section 4 of P.L.1952, c.157 (C.12:7-47) is amended to read as follows:

C.12:7-47 Reckless operation of vessel; penalties, fines.

4. a. A person who disregards the rights or safety of others and operates a vessel on the waters of this State in a manner which unnecessarily interferes with the free and proper use of any waters, or which unnecessarily creates a risk of damage or injury to other craft therein, or to person or property, shall be guilty of reckless operation of a vessel and subject to a term of imprisonment not to exceed 60 days, or to a fine of not less than $50 nor more than $200, or both.

On a second or subsequent conviction, a person guilty of reckless operation of a vessel shall be subject to a term of imprisonment not to exceed three months, or to a fine of not less than $100 nor more than $500, or both.

b. In addition to any other requirements provided by law, a person convicted under this section shall be required after conviction to complete a boat safety course from the list approved by the Superintendent of State Police pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), which shall be completed prior to the restoration of the privilege to operate a vessel which may have been revoked or suspended for a violation of the provisions of this section. Failure to satisfy this requirement shall result in the immediate forfeiture of the privilege to operate a vessel on the waters of this State, or the continuation of revocation until the requirements of this subsection are satisfied.

39. Section 7 of P.L.1952, c.157 (C.12:7-50) is amended to read as follows:

C.12:7-50 Appointment of harbor masters.

7. The department may, whenever in its discretion it shall be deemed necessary, appoint harbor masters who shall have controlling jurisdiction under the law governing the Department of Law and Public Safety to supervise the use of tidal waters within the jurisdiction of this State. Such harbor masters shall be appointed for one year and shall serve without salary and in accordance with rules and regulations promulgated by the commission. Harbor masters appointed under this act shall be supplied with a shield or badge

indicating their office and with an insignia to be carried on their boats while being used on official duty under this act.

40. Section 8 of P.L.1952, c.157 (C.12:7-51) is amended to read as follows:

C.12:7-51 General penalties.

8. Any person who shall violate any provision of chapter 7 of Title 12 of the Revised Statutes, or of any rule or regulation issued thereunder, where the penalty therefor is not specifically prescribed, shall be subject to a fine of $25 for a first offense, $50 for a second offense and $100 for a third and each subsequent offense of the same violation.

41. Section 7 of P.L.1986, c.39 (C.12:7-55) is amended to read as follows:

C.12:7-55 Implied consent.

7. a. (1) A person who operates a power vessel or a vessel which is 12 feet or greater in length on the waters of this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood, except that the taking of samples shall be made in accordance with the provisions of P.L.1986, c.39 and at the request of the State Marine Police Force or a law enforcement officer who has reasonable grounds to believe that the person has been operating a vessel in violation of the provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

(2) Whenever an operator has been involved in an accident resulting in death, bodily injury or property damage, an officer shall consider that fact along with all other facts and circumstances in determining under paragraph (1) of this subsection whether there are reasonable grounds to believe a person is operating a vessel in violation of the provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

b. A record of the taking of the sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy shall be furnished or made available to the person so tested, upon his request.

c. In addition to the samples taken and tests made at the direction of the State Marine Police Force or a law enforcement officer, the person tested shall be permitted to have samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

d. The State Marine Police Force or a law enforcement officer shall inform the person tested of his rights under subsections b. and c. of this section.

e. No chemical test, as provided in this section, or specimen necessary for a test, may be made or taken forcibly and against physical resistance thereto by the defendant. The State Marine Police Force or a law enforcement officer shall, however, inform the person arrested of the consequences of refusing to submit to the test, in accordance with section 9 of P.L.1986, c.39 (C.12:7-57). A standard statement, prepared by the Director of the Division of Motor Vehicles in the Department of Transportation, shall be read by the State Marine Police Force or a law enforcement officer to the person under arrest.

42. Section 9 of P.L.1986, c.39 (C.12:7-57) is amended to read as follows:

C.12:7-57 Refusal to submit to chemical test; revocation of privilege.

9. a. A court shall revoke the privilege of a person to operate a power vessel or a vessel which is 12 feet or greater in length, if after being arrested for a violation of section 3 of P.L.1952, c.157 (C.12:7-46), the person refuses to submit to the chemical test provided for in section 7 of P.L.1986, c.39 (C.12:7-55) when requested to do so. The revocation shall be for six months unless the refusal was in connection with a second offense under section 3 of P.L.1952, c.157 (C.12:7-46), in which case the revocation period shall be for two years. If the refusal was in connection with a third or subsequent offense under section 3 of P.L.1952, c.157 (C.12:7-46), the revocation shall be for 10 years. The court shall also fine a person convicted under this section not less than $250, nor more than $500.

b. The court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been operating or was in actual physical control of the vessel while under the influence of intoxicating liquor, or a narcotic, hallucinogenic or habit-producing drug, whether the person was placed under arrest, and whether the person refused to submit to the test upon request of the officer. If these elements of the violation are not established, no conviction shall issue.

c. In addition to any other requirements provided by law, a person whose privilege to operate a vessel is revoked for refusing to submit to a chemical test shall satisfy the screening, evaluation, referral and program requirements of the Bureau of Alcohol Countermeasures in the Division of Alcoholism in the Department

of Health. A fee of $40 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order to defray the costs of the screening, evaluation and referral by the Bureau of Alcohol Countermeasures and the cost of an education or rehabilitation program. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on the waters of this State or the continuation of revocation until the requirements are satisfied. The revocation for a first offense shall be independent of a revocation imposed because of a conviction under the provisions of section 3 of P.L.1952, c.157 (C.12:7-46); the revocation for a second or subsequent offense shall be concurrent with a revocation imposed because of a conviction under the provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

d. In addition to any other requirements provided by law, a person convicted under this section shall be required after conviction to complete a boat safety course from the list approved by the Superintendent of State Police pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), which shall be completed prior to the restoration of the privilege to operate a vessel which may have been revoked or suspended for a violation of the provisions of this section. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on the waters of this State, or the continuation of revocation until the requirements of this subsection are satisfied.

43. Section 10 of P.L.1986, c.39 (C.12:7-58) is amended to read as follows:

C.12:7-58 Work release program.

10. a. A person who has been convicted of violating section 3 of P.L.1952, c.157 (C.12:7-46), and who has been imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not be released after commitment until the term of imprisonment imposed has been served. A person imprisoned in the county jail or workhouse may, at the discretion of the court, be released on a work release program.

b. A warden or other officer having custody of the county jail or workhouse shall not release a person until the sentence has been served, except that a person may be released by the court on a work release program. A person sentenced to an inpatient rehabilitation program may be released by the court, upon the petition

of the treating agency, to an outpatient rehabilitation program for the duration of the original sentence.

c. This section shall not be construed to interfere in any way with the operation of a writ of habeas corpus, a proceeding in lieu of the prerogative writ, or an appeal.

44. Section 11 of P.L.1986, c.39 (C.12:7-59) is amended to read as follows:

C.12:7-59 Written notice of penalties.

11. A person shall receive written notice of the penalties under section 3 of P.L.1952, c.157 (C.12:7-46) and section 9 of P.L.1986, c.39 (C.12:7-57), when that person is issued a license to operate a vessel, a registration certificate, a certificate of number or a certificate of ownership under chapters 7 and 7A of Title 12 of the Revised Statutes.

45. Section 2 of P.L.1987, c.453 (C.12:7-61) is amended to read as follows:

C.12:7-61 Operation of power vessel by person under 16 years of age.

2. a. A person who is under 16 years of age shall not operate a power vessel on the waters of this State, except that:

(1) a person who is under 16 years of age but at least 13 years of age and possesses a certificate certifying that person's successful completion of a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety may operate:

(a) a power vessel powered solely by a motor of less than one horsepower or an electric motor of 12 volts or less; or

(b) a power vessel which is 12 feet or greater in length and powered by a motor, or combination of motors, of less than 10 horsepower;

(2) A person who is under 16 years of age and has successfully completed an approved boat safety course prior to the enactment date of P.L.1995, c.401 (C.12:7-70 et al.) may operate a power vessel on the tidal waters of this State, provided that the person complies with all other requirements of law, rule and regulation; and

(3) A person who is under 16 years of age and was issued an operator's license pursuant to section 7 of P.L.1954, c.236 (C.12:7-34.7) before the enactment date of P.L.1995, c.401 (C.12:7-70 et al.) may operate a power vessel equipped with an outboard motor until the expiration date of that license.

b. A person who is 16 years of age or older and was born after December 31, 1978 shall not operate a power vessel on the waters of this State without having completed a boat safety course

approved by the Superintendent of State Police in the Department of Law and Public Safety.

c. Except as provided pursuant to section 17 and section 18 of P.L.1995, c.401 (Temporary and C.12:7-86), a person shall not operate a personal watercraft on the waters of this State without having completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety.

d. Whenever a person who is required by this section or by section 7 of P.L.1995, c.401 (C.12:7-76), section 3 or 4 of P.L.1952, c.157 (C.12:7-46 or C.12:7-47), or section 9 of P.L.1986, c.39 (C.12:7-57) to have completed a boat safety course operates a power vessel or personal watercraft, as appropriate, on the waters of this State, that person shall have in possession a certificate certifying that person's successful completion of a boat safety course approved by the superintendent and shall, when requested to do so, exhibit the certificate to a law enforcement or peace officer of this State. Failure of the person to exhibit the certificate is presumptive evidence that the person has not completed an approved boat safety course.

e. A person who violates subsection a., b., c. or d. of this section or who exhibits to a law enforcement or peace officer a certificate of completion of an approved boat safety course of another person is subject to a fine of not less than $100 nor more than $500.

f. A person who owns or has control or custody of a power vessel and allows the power vessel to be operated on the waters of this State by a person who is required pursuant to the provisions of this section to possess a certificate certifying successful completion of a boat safety course but who does not possess such certificate is subject to a fine of not more than $100.

g. A person making application to the Director of the Division of Motor Vehicles for a power vessel operator's license issued pursuant to section 3 of P.L.1995, c.401 (C.12:7-72) who is required pursuant to the provisions of this section to possess a certificate certifying successful completion of a boat safety course shall submit the original or a copy of the certificate with the application. The director shall not issue a power vessel operator's license to such person who fails to submit the original or a copy of the certificate.

46. Section 2 of P.L.1975, c.369 (C.12:7C-8) is amended to read as follows:

C.12:7C-8 Definitions.

2. The following terms whenever used or referred to in this act shall have the following meanings unless a different meaning clearly appears from the context:

a. "Vessel" means a boat or watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water, except a boat or watercraft which is subject to the provisions of P.L.1969, c.264 (C.12:7C-1 et seq.).

b. "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the uses or possession of a vessel subject to an interest of another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

c. "Lienholder" means any person holding a security interest.

d. "Security interest" means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

e. "Division" means the Division of Motor Vehicles in the Department of Transportation.

f. "Waters of this State" means all waters within the jurisdiction of this State, both tidal and nontidal, and the marginal sea adjacent to this State to a distance of three nautical miles from the shoreline.

g. "Removal costs" means any or all costs associated with the removal or destruction of any vessel from land or water and shall include the reimbursement of any or all costs incurred by the applicant in the course of acquiring title to an abandoned vessel.

47. Section 5 of P.L.1975, c.369 (C.12:7C-11) is amended to read as follows:

C.12:7C-11 Notification of owner, lienholder.

5. If a vessel has a boat registration number or other means of identifying the owner thereof, the person desiring to acquire title, shall, if possible, secure the owner's last known address, and the lienholder, if any, appearing on the records of the division. He shall notify the owner by registered letter to his last known address and the lienholder by registered letter at the address of the lienholder appearing on the records of the division that if ownership is not claimed and the vessel removed within 30 days, title to the vessel will be applied for in his name. If any vessel's owner cannot be

identified or his address ascertained, or no lienholder appears on the records of the division, the registered letter need not be sent.

48. Section 7 of P.L.1975, c.369 (C.12:7C-13) is amended to read as follows:

C.12:7C-13 Application for title.

7. At the end of the 30-day period the person desiring to acquire title shall apply to the division for a title to the vessel in his name on forms approved by the division accompanied by the following affidavits:

a. A statement that the vessel has been apparently abandoned for at least six months.

b. Proof that the registered letter was mailed at least 30 days before application or a detailed explanation of the unsuccessful steps taken to identify the owner and secure his address.

c. Proof that a notice was printed in a paper as required in section 6 of P.L.1975, c.369 (C.12:7C-12).

49. Section 8 of P.L.1975, c.369 (C.12:7C-14) is amended to read as follows:

C.12:7C-14 Issuance of title to vessel.

8. Upon receipt of the material required in section 7 of P.L.1975, c.369 (C.12:7C-13) and upon payment of any fees and taxes due, the division shall issue the applicant a title to the vessel.

50. Section 11 of P.L.1975, c.369 (C.12:7C-17) is amended to read as follows:

C.12:7C-17 Report of destruction, disposal of vessel.

11. After receiving title if the applicant destroys or otherwise disposes of the vessel, he shall report the same to the division within 15 days giving all details.

51. Section 12 of P.L.1975, c.369 (C.12:7C-18) is amended to read as follows:

C.12:7C-18 Acquisition of title by division.

12. The division may receive title to any vessel abandoned on any of the waters of this State or on any land owned by this State or any of its political subdivisions by proceeding in the same manner as a landowner, his lessee, or his agent, as set forth in this act.

52. Section 13 of P.L.1975, c.369 (C.12:7C-19) is amended to read as follows:

C.12:7C-19 Violations; penalties.

13. a. Any person who violates section 3 of P.L.1975, c.369 (C.12:7C-9) shall be subject to a fine of not less than $500 and not more than $1,000 to be recovered in a summary proceeding instituted by the Attorney General in the name of the State in accordance with the "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

b. Any person who obtains or attempts to obtain title to a vessel under the provisions of this act through fraudulent means is guilty of a disorderly persons offense and upon conviction shall be subject to a fine of not more than $200.

53. Section 14 of P.L.1975, c.369 (C.12:7C-20) is amended to read as follows:

C.12:7C-20 Rules, regulations.

14. The division may promulgate pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) such rules and regulations deemed necessary to carry out the provisions of this act.

54. N.J.S.2C:29-2 is amended to read as follows:

Resisting arrest, eluding officer.

2C:29-2 Resisting Arrest; Eluding Officer.

a. A person is guilty of a disorderly persons offense if he purposely prevents a law enforcement officer from effecting a lawful arrest, except that he is guilty of a crime of the fourth degree if he:

1. Uses or threatens to use physical force or violence against the law enforcement officer or another; or

2. Uses any other means to create a substantial risk of causing physical injury to the public servant or another.

It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.

b. Any person, while operating a motor vehicle on any street or highway in this State or any vessel, as defined pursuant to section 2 of P.L.1995, c.401 (C.12:7-71), on the waters of this State, who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such

officer to bring the vehicle or vessel to a full stop commits a crime of the third degree; except that, a person is guilty of a crime of the second degree if the flight or attempt to elude creates a risk of death or injury to any person. For purposes of this subsection, there shall be a permissive inference that the flight or attempt to elude creates a risk of death or injury to any person if the person's conduct involves a violation of chapter 4 of Title 39 or chapter 7 of Title 12 of the Revised Statutes. In addition to the penalty prescribed under this subsection or any other section of law, the court shall order the suspension of that person's driver's license, or privilege to operate a vessel, whichever is appropriate, for a period of not less than six months or more than two years.

In the case of a person who is at the time of the imposition of sentence less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court. If the driving or vessel operating privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle or a vessel, whichever is appropriate, during the period of license suspension or postponement imposed pursuant to this section the person shall, upon conviction, be subject to the penalties set forth in

R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of violation of R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. If the person is the holder of a driver's or vessel operator's license from another jurisdiction, the court shall not collect the license but shall notify the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving or vessel operating privileges, whichever is appropriate, in this State.

For the purposes of this subsection, it shall be a rebuttable presumption that the owner of a vehicle or vessel was the operator of the vehicle or vessel at the time of the offense.

55. There is appropriated from the receipts collected by the Division of State Police pursuant to subsection b. of section 17 of P.L.1995, c.401, such sums as are necessary to develop and administer the boat safety test and issue boat safety certificates.

56. The following sections are repealed:

Repealer.

Section 1 of P.L.1941, c.396 (C.12:7-16.1)
Section 2 of P.L.1941, c.396 (C.12:7-16.2)
Section 3 of P.L.1941, c.396 (C.12:7-16.3)
Section 9 of P.L.1952, c.157 (C.12:7-52)
Section 1 of P.L.1954, c.236 (C.12:7-34.1)
Section 4 of P.L.1954, c.236 (C.12:7-34.4)
Section 6 of P.L.1954, c.236 (C.12:7-34.6)
Section 7 of P.L.1954, c.236 (C.12:7-34.7)
Section 9 of P.L.1954, c.236 (C.12:7-34.9)
Section 13 of P.L.1954, c.236 (C.12:7-34.13)
Section 14 of P.L.1954, c.236 (C.12:7-34.14)
Section 18 of P.L.1954, c.236 (C.12:7-34.18)
Section 19 of P.L.1954, c.236 (C.12:7-34.19)
Section 20 of P.L.1954, c.236 (C.12:7-34.20)
Section 22 of P.L.1954, c.236 (C.12:7-34.22)
Section 23 of P.L.1954, c.236 (C.12:7-34.23)
Section 25 of P.L.1954, c.236 (C.12:7-34.25)

Section 27 of P.L.1954, c.236 (C.12:7-34.27)
Section 28 of P.L.1954, c.236 (C.12:7-34.28)
Section 29 of P.L.1954, c.236 (C.12:7-34.29)
Section 30 of P.L.1954, c.236 (C.12:7-34.30)
Section 31 of P.L.1954, c.236 (C.12:7-34.31)
Section 33 of P.L.1954, c.236 (C.12:7-34.33)
Section 34 of P.L.1954, c.236 (C.12:7-34.34)
Section 2 of P.L.1962, c.73 (C.12:7-34.37)
Section 16 of P.L.1962, c.73 (C.12:7-34.51)
Section 17 of P.L.1962, c.73 (C.12:7-34.52)
Section 20 of P.L.1962, c.73 (C.12:7-34.55)
Section 1 of P.L.1987, c.9 (C.12:7-34.6a)
Section 1 of P.L.1973, c.231 (C.12:7-34.9a)
Section 1 of P.L.1993, c.118 (C.12:7-34.9b)
Section 2 of P.L.1993, c.118 (C.12:7-34.9c)
Section 3 of P.L.1993, c.118 (C.12:7-34.9d).

57. This act shall take effect on the first day of the sixth month following enactment, except that sections 17 and 55 shall take effect immediately and section 17 shall expire on the first day of the sixth month following enactment.

Approved January 10, 1996.

CHAPTER 402

AN ACT concerning dam repairs, amending R.S.58:4-1 and supplementing P.L.1969, c.19 (C.58:16A-50 et al.).

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

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

Reservoir, dam restrictions.

58:4-1. a. No municipality, corporation or person shall, without the consent of the Commissioner of Environmental Protection, hereafter in this chapter designated as the commissioner, build any reservoir or construct any dam, or repair, alter or improve existing dams on any river or stream in this State or between this

and any other such state which will raise the waters of such river or stream more than five feet above their usual mean low-water height. No municipality, corporation or person shall, without the consent of the commissioner, build any reservoir or construct any dam, or repair, alter or improve existing dams in the pinelands area, as designated by subsection a. of section 10 of P.L.1979, c.111 (C.13:18A-11), which will raise the waters of any river or stream more than eight feet above the surface of the ground where the drainage area above the dam or reservoir is more than one square mile in extent and where the water surface created by the dam or reservoir is more than 100 acres in extent. The commissioner may investigate and take appropriate action regarding any dam or reservoir about which he has a security or safety concern. With respect to dams and reservoirs located on lands utilized for agricultural or horticultural purposes within the pinelands area, the commissioner's actions shall be undertaken after consultation with the Secretary of Agriculture.

b. The commissioner shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production area designated pursuant to N.J.A.C.7:50-5.14 in the pinelands area.

C.58:16A-55.7 Exemptions to requirement for permit to repair dam.

2. The Commissioner of Environmental Protection shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production area designated pursuant to N.J.A.C.7:50-5.14 in the pinelands area.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 403

AN ACT appropriating $443,000 from the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, for the purpose of providing grants to local government units for financing the cost of the mapping of sanitary and stormwater sewer system projects.

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

1. a. There is appropriated from the "Stormwater Management and Combined Sewer Overflow Abatement Fund," created pursuant to section 14 of the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, to the Department of Environmental Protection the sum of $443,000 for the purpose of providing grants to local government units for financing the cost of the mapping of sanitary and stormwater sewer system projects, as follows:

LOCAL GOVERNMENT UNIT	COUNTY	GRANT AWARD
Absecon City	Atlantic	$45,900
Atlantic City	Atlantic	47,650
Brigantine City	Atlantic	39,800
Estell Manor City	Atlantic	27,050
Middle Township	Cape May	41,700
Avon-By-The-Sea Boro	Monmouth	47,200
Sea Bright Boro	Monmouth	64,300
Barnegat Township	Ocean	32,300
Brick Township	Ocean	97,100

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. The Department of Environmental Protection may apply the provisions of the "Sewage Infrastructure Improvement Act," P.L.1988, c.90 (C.58:25-23 et seq.), and any rules or regulations adopted pursuant thereto, as appropriate, in awarding the grants authorized pursuant to section 1 of this act.

3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1989, c.181.

4. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 404

AN ACT appropriating $8,591,548 from the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, for the purpose of providing grants to local government units for financing the cost of the designing of combined sewer overflow abatement projects.

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

1. a. There is appropriated from the "Stormwater Management and Combined Sewer Overflow Abatement Fund," created pursuant to section 14 of the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, to the Department of Environmental Protection the sum of $8,591,548 for the purpose of providing grants to local government units for financing the cost of the designing of combined sewer overflow abatement projects, as follows:

LOCAL GOVERNMENT UNIT	COUNTY	GRANT AWARD
Hackensack City	Bergen	$651,298
Newark City	Essex	3,181,500
Jersey City	Hudson	2,958,750
Elizabeth City	Union	1,800,000

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. The Department of Environmental Protection may apply the provisions of the "Sewage Infrastructure Improvement Act," P.L.1988, c.90 (C.58:25-23 et seq.), and any rules or regulations adopted pursuant thereto, as appropriate, in awarding the grants authorized pursuant to section 1 of this act.

3. Subject to the approval of the Joint Budget Oversight Committee or its successor, the Commissioner of Environmental Protection may reduce the amount of any grant awarded pursuant to section 1 of this act based upon final allowable project cost determined in accordance with rules and regulations adopted pursuant to the "Sewage Infrastructure Improvement Act," P.L.1988, c.90 (C.58:25-23 et seq.).

4. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1989, c.181.

5. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 405

AN ACT concerning the crime of leader of firearms trafficking network and supplementing Title 2C of the New Jersey Statutes.

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

C.2C:39-16 "Leader of a firearms trafficking network" defined; first degree crime; fines; sentencing.

1. A person is a leader of a firearms trafficking network if he conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to unlawfully manufacture, transport, ship, sell or dispose of any firearm. Leader of firearms trafficking network is a crime of the first degree.

As used in this section: "leader of a firearms trafficking network" means a person who occupies a position of authority or control over other persons in a scheme or organization of illegal firearms manufacturing, transporting, shipping or selling and who exercises that authority or control over others involved in the scheme or organization.

Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed $500,000.00 or five times the value of the firearms involved, whichever is greater.

Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of leader of firearms trafficking network shall not merge with the conviction for any offense which is the object of the conspiracy. Nothing contained in this section shall prohibit the court from imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this section be construed in any way to preclude or limit the prosecution or conviction of any person for conspiracy under N.J.S.2C:5-2, or any prosecution or conviction for weapons offenses under the provisions of chapter 39 of Title 2C of the New Jersey Statutes, N.J.S.2C:41-2 (racketeering activities) or subsection g. of N.J.S.2C:5-2 (leader of organized crime).

It shall not be necessary in any prosecution under this section for the State to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attendant circumstances, including but not limited to the number of persons involved in the scheme or course of conduct, the actor's net worth and his expenditures in relation to his legitimate sources of income, the amount of firearms involved, or the amount of cash or currency involved.

It shall not be a defense to a prosecution under this section that the firearms were brought into or transported in this State solely for ultimate distribution or dispensing in another jurisdiction; nor shall it be a defense that any profit was intended to be made in another jurisdiction.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 406

AN ACT concerning the qualification of certain persons as veterans for certain purposes, amending various parts of the statutory law and supplementing P.L.1954, c.84 (C.43:15A-1 et seq.) and article 1 of 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.11A:5-1 is amended to read as follows:

Definitions.

11A:5-1. Definitions. As used in this chapter:

a. "Disabled veteran" means any veteran who is eligible to be compensated for a service-connected disability from war service by the United States Veterans Administration or who receives or is entitled to receive equivalent compensation for a service-connected disability which arises out of military or naval service as set forth in this chapter and who has submitted sufficient evidence of the record of disability incurred in the line of duty to the commissioner on or before the closing date for filing an application for an examination;

b. "Veteran" means any honorably discharged soldier, sailor, marine or nurse who served in any army or navy of the allies of the United States in World War I, between July 14, 1914 and November 11, 1918, or who served in any army or navy of the allies of the United States in World War II, between September 1, 1939 and September 2, 1945 and who was inducted into that service through voluntary enlistment, and was a citizen of the United States at the time of the enlistment, and who did not renounce or lose his or her United States citizenship; or any soldier, sailor,

marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has been discharged or released under other than dishonorable conditions from that service in any of the following wars or conflicts and who has presented to the commissioner sufficient evidence of the record of service on or before the closing date for filing an application for an examination:

(1) World War I, between April 6, 1917 and November 11, 1918;

(2) World War II, on or after September 16, 1940, who shall have served at least 90 days beginning on or before December 31, 1946 in such active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies; except that any person receiving an actual service-incurred injury or disability shall be classed a veteran whether or not that person has completed the 90-day service;

(3) Korean conflict, on or after June 23, 1950, who shall have served at least 90 days beginning on or before January 31, 1955, in active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies; except that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service;

(4) Vietnam conflict, on or after December 31, 1960, who shall have served at least 90 days beginning on or before May 7, 1975, in active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies, and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, or exclusive of any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; except that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as provided;

(5) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days service as herein provided;

(6) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(7) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(8) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States, Congress or the Governor, whichever date of termination is the latest, in such

active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

c. "War service" means service by a veteran in any war or conflict described in this chapter during the periods specified.

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

Definitions.

18A:66-2. As used in this article:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by or in behalf of the member, including interest credited to January 1, 1956, standing to the credit of the member's individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this article.

c. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this article.

d. "Compensation" means the contractual salary, for services as a teacher as defined in this article, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular school day or the regular school year.

e. "Employer" means the State, the board of education or any educational institution or agency of or within the State by which a teacher is paid.

f. "Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

g. "Fiscal year" means any year commencing with July 1, and ending with June 30, next following.

h. "Pension" means payments for life derived from appropriations made by the State or employers to the Teachers' Pension and Annuity Fund.

i. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, granted under the provisions of this article, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

j. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted to a member from the Teachers' Pension and Annuity Fund, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

k. "Present-entrant" means any member of the Teachers' Pension and Annuity Fund who had established status as a "present-entrant member" of said fund prior to January 1, 1956.

l. "Rate of contribution initially certified" means the rate of contribution certified by the retirement system in accordance with N.J.S.18A:66-29.

m. "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

n. "Retirement allowance" means the pension plus the annuity.

o. "School service" means any service as a "teacher" as defined in this section.

p. "Teacher" means any regular teacher, special teacher, helping teacher, teacher clerk, principal, vice-principal, supervisor, supervising principal, director, superintendent, city superintendent, assistant city superintendent, county superintendent, State Commissioner or Assistant Commissioner of Education, members of the State Department of Education who are certificated, unclassified professional staff and other members of the teaching or professional staff of any class, public school, high school, normal school, model school, training school, vocational school, truant reformatory school, or parental school, and of any and all classes or schools within the State conducted under the order and superintendence, and wholly or partly at the expense of the State Board of Education, of a duly elected or appointed board of education, board of school directors, or board of trustees of the State or of

any school district or normal school district thereof, and any persons under contract or engagement to perform one or more of these functions. It shall also mean any person who serves, while on an approved leave of absence from regular duties as a teacher, as an officer of a local, county or State labor organization which represents, or is affiliated with an organization which represents, teachers as defined in this subsection. No person shall be deemed a teacher within the meaning of this article who is a substitute teacher. In all cases of doubt the board of trustees shall determine whether any person is a teacher as defined in this article.

q. "Teachers' Pension and Annuity Fund," hereinafter referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this article, including the several funds placed under said system. By that name all its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

r. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided; and provided further that any member classed as a veteran pursuant to this subsection prior to August 1, 1966, shall continue to be classed as a veteran, whether or not that person completed the 90-day service between said dates as herein provided;

(12) Vietnam conflict, on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized

Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided;

(13) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(14) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability

shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States, Congress or the Governor, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

s. "Child" means a deceased member's unmarried child either (a) under the age of 18 or (b) of any age who, at the time of the member's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

t. "Widower" means the man to whom a member was married at least five years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

u. "Widow" means the woman to whom a member was married at least five years before the date of his death and to whom he continued to be married until the date of his death and who was receiving at least one-half of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death.

The dependency of such a widow will be considered terminated by the marriage of the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

v. "Parent" means the parent of a member who was receiving at least one-half of the parent's support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

w. "Medical board" means the board of physicians provided for in N.J.S.18A:66-56.

3. Section 6 of P.L.1954, c.84 (C.43:15A-6) is amended to read as follows:

C.43:15A-6 Definitions.

6. As used in this act:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by or on behalf of the member, standing to the credit of the member's individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this act.

c. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, granted under the provisions of this act, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

d. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this act.

e. "Child" means a deceased member's unmarried child either (1) under the age of 18 or (2) of any age who, at the time of the member's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

f. "Parent" shall mean the parent of a member who was receiving at least 1/2 of the parent's support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death.

The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

g. "Widower" means the man to whom a member was married at least five years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least 1/2 of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

h. "Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

i. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.

j. "Medical board" shall mean the board of physicians provided for in section 17 (C.43:15A-17).

k. "Pension" means payments for life derived from appropriations made by the employer as provided in this act.

l. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted under the provisions of this act, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

m. "Public Employees' Retirement System of New Jersey," hereinafter referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this act including the several funds placed under said system. By that name all of its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

n. "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage

rate of earnings on investments based on the market value of the assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

o. "Retirement allowance" means the pension plus the annuity.

p. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I, between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided; and provided further, that any member classed as a veteran pursuant to this paragraph prior to August 1, 1966, shall continue to be classed as a veteran whether or not that person completed the 90-day service between said dates as herein provided;

(12) Vietnam conflict on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90 days' service as herein provided;

(13) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(14) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States, Congress or the Governor, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States, Congress or the Governor, whichever date of termination is the latest, in such active service; provided, that

any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

q. "Widow" means the woman to whom a member was married at least five years before the date of his death and to whom he continued to be married until the date of his death and who was receiving at least 1/2 of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow will be considered terminated by the marriage of the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

r. "Compensation" means the base or contractual salary, for services as an employee, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular workday or the regular work year. In cases where salary includes maintenance, the retirement system shall fix the value of that part of the salary not paid in money which shall be considered under this act.

4. Section 1 of P.L.1983, c.391 (C.43:16A-11.7) is amended to read as follows:

C.43:16A-11.7 Definition of veteran.

1. For purposes of this act "veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I, between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizen-

ship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized

Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided; and provided further, that any member classed as a veteran pursuant to this subparagraph prior to August 1, 1966, shall continue to be classed as a veteran whether or not the member completed the 90-day service between said dates as herein provided;

(12) Vietnam conflict on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511 (d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90 days' service as herein provided;

(13) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(14) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as

proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States, Congress or the Governor, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

5. Section 1 of P.L.1963, c.171 (C.54:4-8.10) is amended to read as follows:

C.54:4-8.10 Definitions.

1. As used in this act:

(a) "Active service in time of war" means active service at some time during one of the following periods:

Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States, Congress or the Governor, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Lebanon peacekeeping mission, on or after September 26,1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service;

provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Vietnam conflict, December 31, 1960, to May 7, 1975;

The Korean conflict, June 23, 1950 to January 31, 1955;

World War II, September 16, 1940 to December 31, 1946;

World War I, April 6, 1917 to November 11, 1918, and in the case of service with the United States military forces in Russia, April 6, 1917 to April 1, 1920;

Spanish-American War, April 21, 1898 to August 13, 1898;

Civil War, April 15, 1861 to May 26, 1865; or, as to any subsequent war, during the period from the date of declaration of war to the date on which actual hostilities shall cease.

(b) "Assessor" means the assessor, board of assessors or any other official or body of a taxing district charged with the duty of assessing real and personal property for the purpose of general taxation.

(c) "Collector" means the collector or receiver of taxes of a taxing district.

(d) "Honorably discharged or released under honorable circumstances from active service in time of war," means and includes every form of separation from active, full-time duty with military or naval pay and allowances in some branch of the Armed Forces of the United States in time of war, other than those marked "dishonorable," "undesirable," "bad conduct," "by sentence of general court martial," "by sentence of summary court martial" or similar expression indicating that the discharge or release was not under honorable circumstances. A disenrollment certificate or other form of release terminating temporary service in a military or naval branch of the armed forces rendered on a voluntary and part-time basis without pay, or a release from or deferment of induction into the active military or naval service shall not be deemed to be included in the aforementioned phrase.

(e) "Pre-tax year" means the particular calendar year immediately preceding the "tax year."

(f) "Resident" means one legally domiciled within the State of New Jersey. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State for the purposes of this act. Absence from this State for a period of 12 months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing legal domicile within the State shall be upon the claimant.

(g) "Tax year" means the particular calendar year in which the general property tax is due and payable.

(h) "Veteran" means any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States.

(i) "Veteran's deduction" means the deduction against the taxes payable by any person, allowable pursuant to this act.

(j) "Surviving spouse" means the surviving wife or husband of any of the following, while he or she is a resident of this State, during widowhood or widowerhood:

1. A citizen and resident of this State who has died or shall die while on active duty in time of war in any branch of the Armed Forces of the United States; or

2. A citizen and resident of this State who has had or shall hereafter have active service in time of war in any branch of the Armed Forces of the United States and who died or shall die while on active duty in a branch of the Armed Forces of the United States; or

3. A citizen and resident of this State who has been or may hereafter be honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States.

(k) "Cooperative" means a housing corporation or association incorporated or organized under the laws of New Jersey which entitles a shareholder thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by the corporation or association;

(l) "Mutual housing corporation" means a corporation not-for-profit incorporated under the laws of New Jersey on a mutual or cooperative basis within the scope of section 607 of the "National Defense Housing Act," Pub. L.76-849 (42 U.S.C. § 1521 et seq.), which acquired a National Defense Housing Project pursuant to that act.

C.43:15A-60.2 Permission for member to cancel purchase of credit.

6. If, following application by a member of the retirement system to purchase credit therein under any provision of P.L.1954, c.84 (C.43:15A-1 et seq.), as amended and supplemented, the member attains qualification as a veteran member pursuant to the enactment of a law, the adoption of a rule or regulation, the revision of an administrative interpretation or application of such a rule or regulation, or any other official act, the member shall be permitted, upon written application to the retirement system

within two years following the effective date of that law, rule, regulation, revision, or other act or within two years of the effective date of P.L.1995, c.406 (C.43:15A-60.2 et al.), whichever is later, to terminate any remaining obligation to complete the purchase and to receive a return of all contributions deducted or other payments made on or after the effective date of the law, rule, regulation, revision, or other act in connection with the purchase. If any service has been credited under the retirement system to the member in connection with the purchase, the amount of that service so credited shall be reduced in proportion to the return to the member hereunder of any contributions or other payments.

C.18A:66-70.1 Permission for member to cancel purchase of credit.

7. If, following application by a member of the retirement system to purchase credit therein under any provision of article 1 of chapter 66 of Title 18A of the New Jersey Statutes, as amended and supplemented, the member attains qualification as a veteran member pursuant to the enactment of a law, the adoption of a rule or regulation, the revision of an administrative interpretation or application of such a rule or regulation, or any other official act, the member shall be permitted, upon written application to the retirement system within two years following the effective date of that law, rule, regulation, revision, or other act or within two years of the effective date of P.L.1995, c.406 (C.43:15A-60.2 et al.), whichever is later, to terminate any remaining obligation to complete the purchase and to receive a return of all contributions deducted or other payments made on or after the effective date of the law, rule, regulation, revision, or other act in connection with the purchase. If any service has been credited under the retirement system to the member in connection with the purchase, the amount of that service so credited shall be reduced in proportion to the return to the member hereunder of any contributions or other payments.

8. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 407

AN ACT concerning private passenger automobile insurance and amending P.L.1972, c.70.

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

New Jersey State Library

1. Section 5 of P.L.1972, c.70 (C.39:6A-5) is amended to read as follows:

C.39:6A-5 Payment of personal injury protection coverage benefits.

5. Payment of personal injury protection coverage benefits.

a. An insurer may require written notice to be given as soon as practicable after an accident involving an automobile with respect to which the policy affords personal injury protection coverage benefits pursuant to this act. In the case of claims for medical expense benefits, written notice shall be provided to the insurer by the treating medical provider no later than 21 days following the commencement of treatment. Notification required under this section shall be made in accordance with regulations adopted by the Commissioner of Insurance and on a form prescribed by the Commissioner of Insurance. Within a reasonable time after receiving notification required pursuant to this act, the insurer shall confirm to the treating medical provider that its policy affords the claimant personal injury protection coverage benefits as required by section 5 of P.L.1972, c.70 (C.39:6A-5).

b. For the purposes of this section, notification shall be deemed to be met if a treating medical provider submits a bill or invoice to the insurer for reimbursement of services within 21 days of the commencement of treatment.

c. In the event that notification is not made by the treating medical provider within 21 days following the commencement of treatment, the insurer shall reserve the right to deny, in accordance with regulations established by the Commissioner of Insurance, payment of the claim and the treating medical provider shall be prohibited from seeking any payment directly from the insured. In establishing the standards for denial of payment, the Commissioner of Insurance shall consider the length of delay in notification, the severity of the treating medical provider's failure to comply with the notification provisions of this act based upon the potential adverse impact to the public and whether or not the provider has engaged in a pattern of noncompliance with the notification provisions of this act. In establishing the regulations necessary to effectuate the purposes of this subsection, the Commissioner of Insurance shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply. Such instances may include, but not be limited to, a treating medical provider's failure to provide notification to the insurer as required by this act due to the insured's medical condition during the time period within which notification is required.

d. A medical provider who fails to notify the insurer within 21 days and whose claim for payment has been denied by the insurer pursuant to the standards established by the Commissioner of Insurance may, in the discretion of a judge of the Superior Court, be permitted to refile such claim provided that the insurer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment and shall be made upon motion based upon affidavits showing sufficient reasons for the failure to notify the insurer within the period of time prescribed by this act.

e. For the purposes of this section, "treating medical provider" shall mean any licensee of the State of New Jersey whose services are reimbursable under personal injury protection coverage, including but not limited to persons licensed to practice medicine and surgery, psychology, chiropractic, or such other professions as the Commissioner of Insurance determines pursuant to regulation, or other licensees similarly licensed in other states and nations, or the practitioner of any religious method of healing, or any general hospital, mental hospital, convalescent home, nursing home or any other institution, whether operated for profit or not, which maintains or operates facilities for health care, whose services are compensated under personal injury protection insurance proceeds.

f. In instances when multiple treating medical providers render services in connection with emergency care, the Commissioner of Insurance shall designate, through regulation, a process whereby notification by one treating medical provider to the insurer shall be deemed to meet the notification requirements of all the treating medical providers who render services in connection with emergency care.

g. Personal injury protection coverage benefits shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where, within 60 days of receipt of notice of the claim, the insurer notifies the claimant or his representative in writing of the denial of the claim or the need for additional time, not to

exceed 45 days, to investigate the claim, and states the reasons therefor. The written notice stating the need for additional time to investigate the claim shall set forth the number of the insurance policy against which the claim is made, the claim number, the address of the office handling the claim and a telephone number, which is toll free or can be called collect, or is within the claimant's area code. For the purpose of determining interest charges in the event the injured party prevails in a subsequent proceeding where an insurer has elected a 45-day extension pursuant to this subsection, payment shall be considered overdue at the expiration of the 45-day period or, if the injured person was required to provide additional information to the insurer, within 10 business days following receipt by the insurer of all the information requested by it, whichever is later.

For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

h. All overdue payments shall bear interest at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money. All automobile insurers shall provide any claimant with the option of submitting a dispute under this section to binding arbitration. Arbitration proceedings shall be administered and subject to procedures established by the American Arbitration Association. If the claimant prevails in the arbitration proceedings, the insurer shall pay all the costs of the proceedings, including reasonable attorney's fees, to be determined in accordance with a schedule of hourly rates for services performed, to be prescribed by the Supreme Court of New Jersey.

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

3. This act shall take effect immediately, but shall remain inoperative for 180 days and shall apply to accidents occurring after that date.

Approved January 10, 1996.

CHAPTER 408

AN ACT concerning the forfeiture of retirement benefits by members of public pension funds or retirement systems and supplementing Title 43 of the Revised Statutes.

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

C.43:1-3 Receipt of pension conditioned upon honorable service; forfeiture due to misconduct; evaluation.

1. a. The receipt of a public pension or retirement benefit is hereby expressly conditioned upon the rendering of honorable service by a public officer or employee.

b. The board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State is authorized to order the forfeiture of all or part of the pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service which renders the member's service or part thereof dishonorable.

c. In evaluating a member's misconduct to determine whether it constitutes a breach of the condition that public service be honorable and whether forfeiture or partial forfeiture of earned pension or retirement benefits is appropriate, the board of trustees shall consider and balance the following factors in view of the goals to be achieved under the pension laws:

(1) the member's length of service;

(2) the basis for retirement;

(3) the extent to which the member's pension has vested;

(4) the duties of the particular member;

(5) the member's public employment history and record covered under the retirement system;

(6) any other public employment or service;

(7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;

(8) the relationship between the misconduct and the member's public duties;

(9) the quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations;

(10) the availability and adequacy of other penal sanctions; and

(11) other personal circumstances relating to the member which bear upon the justness of forfeiture.

d. Whenever a board of trustees determines, pursuant to this section, that a partial forfeiture of earned pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.

C.43:1-4 Communication of prosecution commencing, conviction entered.

2. A county or municipal prosecutor shall inform the Director of the Division of Criminal Justice in the Department of Law and Public Safety in writing whenever a prosecution is commenced, or a conviction entered, against any person who the prosecutor knows, or has reason to believe, is a member of a State or locally-administered pension fund or retirement system for any crime or offense. The director shall compile this information and similar information from the records of the division and the records of any other jurisdiction or law enforcement agency which may be available to the division and transmit it to the Director of the Division of Pensions and Benefits. The Director of the Division of Pensions and Benefits shall determine whether a particular officer or employee is a member of a State or locally-administered pension fund or retirement system and, if so, shall forward the information to the board of trustees of that fund or system for the board's consideration pursuant to the provisions of section 1 of this act.

C.43:1-5 Notice of removal from office, employment.

3. Whenever any State or local public employer takes formal disciplinary action against an officer or employee who is a member of any State or locally-administered pension fund or retirement system by removing that officer or employee from office or employment, it shall inform the board of trustees of the fund or system of its action in writing so that the board may consider the member's conduct pursuant to the provisions of section 1 of this act.

4. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 409

AN ACT concerning environmental education, supplementing chapter 6 of Title 18A of the New Jersey Statutes, repealing P.L.1971. c.279, and making an appropriation.

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

C.18A:6-91.1 New Jersey Commission on Environmental Education.

1. a. There is hereby created in but not of the Department of Environmental Protection the New Jersey Commission on Environmental Education. The commission shall consist of 23 public members, the commissioners, or their designees, of the Department of Education, the Department of Environmental Protection, and the Department of Health, the Attorney General or a designee with responsibility in the area of environmental law, the Executive Director of the Commission on Higher Education, and a designee of the Governor. The public members shall consist of two college professors in the fields of environmental education or environmental science; one private school teacher and two public school teachers, one of whom is selected by the New Jersey Education Association, including one teacher from kindergarten to third grade, one from fourth to sixth grade, and one from seventh to twelfth grade; one school administrator; one representative of the New Jersey Principals and Supervisors Association; one local school board representative selected by the New Jersey School Boards Association; one member of an interfaith religious organization; one representative from labor; one representative from industry; two representatives from environmental or public interest organizations; two representatives from cultural institutions such as museums and nature centers; two representatives from the field of environmental health; two non-academic science professionals; two representatives from the agricultural community; one student representative from a student environmental organization, such as Kids Against Pollution; and one representative from the South Jersey Environmental Information Center.

b. The public members shall be appointed by the Governor for terms of three years, except that the student representative shall be appointed for a term of one year, and in the first year the other public members shall be appointed to staggered terms as follows:

(1) Seven shall be appointed to terms of one year;

(2) Seven shall be appointed to terms of two years; and

(3) Seven shall be appointed to terms of three years.

c. The commission shall meet, at a minimum, four times a year.

d. The commission shall elect a chairperson and a vice-chairperson from among its membership. The term of office for each position shall be two years.

e. The commission may hire staff as necessary within the limits of funding as provided by section 5 of P.L.1995, c.409 (C.18A:6-91.5).

C.18A:6-91.2 Duties of commission.

2. The commission shall:

a. Advise and oversee the implementation of the Plan of Action that was adopted by the Commission on Environmental Education created by Executive Order Number 205 of 1989 and reconvened as the New Jersey Commission on Environmental Education by Executive Order Number 111 of 1993;

b. Develop and maintain, with the assistance of the various agencies and departments, a bi-annual inventory of the environmental education resources that are available in all State agencies and departments;

c. Develop and maintain an Environmental Education Network of activities, resources and model programs throughout the State;

d. Organize a global forum on environmental education to be held every three to five years;

e. Organize and support an annual Environmental Education Week;

f. Support such other environmental education activities as the commission determines are appropriate;

g. Provide technical assistance to the Legislature for legislation related to environmental education; and

h. Submit an annual report on the status of environmental education to the Governor and the Legislature.

C.18A:6-91.3 Inter-agency Work Group, duties.

3. The Inter-agency Work Group, created pursuant to section 4 of P.L.1995, c.409 (C.18A:6-91.4), may:

a. Publicize existing model environmental education programs;

b. Provide leadership and coordination in conducting teacher in-service programs throughout the State;

c. Solicit public and private partnerships at the local, State and national levels to provide teacher education programs; and

d. Provide the commission with information concerning the availability of environmental education to students in the State.

C.18A:6-91.4 Inter-agency Work Group created.

4. There is created an Inter-agency Work Group, which shall consist of the commissioner or secretary, or his designee, of each of the principal departments. This work group shall meet periodically to coordinate the environmental education efforts of the various departments and agencies in the State.

C.18A:6-91.5 Environmental Education Fund created.

5. The Environmental Education Fund is established as a nonlapsing revolving fund in the Department of Environmental Protection. The fund shall be administered by the commission, and shall be credited with all moneys appropriated by this act and with grant moneys or any other revenue obtained by the commission for the purpose of environmental education. Interest received on moneys in the fund shall be credited to the fund.

Repealer.

6. P.L.1971, c.279 (C.18A:6-80 et seq.) is hereby repealed.

7. The Commission on Environmental Education, which was created by Executive Order Number 205 of 1989 and reconvened as the New Jersey Commission on Environmental Education by Executive Order Number 111 of 1993, is abolished as of the date of the first meeting of the New Jersey Commission on Environmental Education created by this act.

8. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 410

AN ACT concerning the formula for death benefits payable upon death of retired members of the Teachers' Pension and Annuity Fund, amending N.J.S.18A:66-37, N.J.S.18A:66-41, N.J.S.18A:66-42, N.J.S.18A:66-44 and N.J.S.18A:66-53.

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

1. N.J.S.18A:66-37 is amended to read as follows:

Early retirement.

18A:66-37. Should a member resign after having established 25 years of creditable service before reaching age 60, he may elect "early retirement," provided, that such election is communicated by such member to the retirement system by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof he desires to be retired. He shall receive, in lieu of the payment provided in N.J.S.18A:66-34, an annuity which is the actuarial equivalent of his accumulated deductions and a pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 1/70 of his final compensation for each year of service credited as class A service and 1/60 of his final compensation for each year of service credited as class B service, calculated in accordance with N.J.S.18A:66-44, reduced by 1/4 of 1% for each month that the member lacks of being age 55; provided, however, that upon the receipt of proper proofs of the death of such a member there shall be paid to his beneficiary an amount equal to 3/16 of 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.

The board of trustees shall retire him at the time specified or at such other time within one month after the date so specified as the board finds advisable.

2. 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 1/2% 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 40% of final compensation, except that in no case shall the rate of allowance exceed 9/10 of the rate of the regular service retirement allowance which the member would have received had he remained in service from the date of retirement to age 60.

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.

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 2/3 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.

4. N.J.S.18A:66-44 is amended to read as follows:

Service retirement allowances.

18A:66-44. A member, upon retirement for service, shall receive a retirement allowance consisting of:

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions, together with interest after January 1, 1956, less any excess contributions as provided in N.J.S.18A:66-20; and

(b) a pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 1/70 of his final compensation for each year of service credited as class A service and 1/60 of his final compensation for each year of service credited as class B service.

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 3/16 of 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.

5. N.J.S.18A:66-53 is amended to read as follows:

Additional death benefit coverage.

18A:66-53. a. Each member who is a member on January 1, 1958 and each person who thereafter becomes a member will be eligible to purchase the additional death benefit coverage hereinafter described, provided that he selects such coverage within one year after January 1, 1958 or after the effective date of membership, whichever date is later.

b. Each member who is a member on October 29, 1969, but for whom such additional death benefit coverage is not then in effect, shall, during the period stated below, also be eligible to elect such additional death benefit coverage, provided he (1) furnished satisfactory evidence of insurability, (2) on the date of such election is actively at work and performing all his regular duties at his customary place of employment and (3) agrees to make such additional contribution as may be required by the board of trustees by reason of the commencement of such member's participation in the benefits of this section pursuant to this subsection b. Applications under this subsection shall be filed during the period January 1, 1970 to March 31, 1970, both dates inclusive. Benefits for a member applying under this subsection shall come into effect on the later of (a) July 1, 1970 and (b) the date a required percentage of such members shall have applied for such additional death benefit coverage. This required percentage shall be fixed by the board of trustees. Any such percentage may be made applicable to male or female members only or to other groupings as determined by the board of trustees.

c. No member who enrolls on and after July 1, 1970 for the additional death benefit coverage provided by this section shall be eligible for the benefits described in subsections f. and g. if such member retires with less than 10 years of participation in the program.

d. The board of trustees shall establish schedules of contributions to be made by the members who elect to purchase the additional death benefit coverage. Such contributions shall be so computed that the contributions made by or on behalf of all covered members in the aggregate shall be sufficient to provide for the cost of the benefits established by subsections e. and g. of this section. Such schedules of contributions shall be subject to adjustment from time to time, by the board of trustees, as the need may appear.

e. Upon the receipt of proper proofs of the death in service, occurring on or after July 1, 1968, of any such member while covered for the additional death benefit coverage there shall be paid to such member's beneficiary an amount equal to two times the compensation received by the member in the last year of creditable service.

f. The board of trustees may also provide, effective as of January 1, 1961, for additional death benefit coverage, as described in subsection g. of this section, for former members who are receiving retirement allowances pursuant to the provisions of this article, subject to the provisions hereinafter stated, and the board may terminate such coverage at any time. The additional death benefit coverage to be so provided shall be in accordance with rules as determined by the board from time to time on the basis of dates of retirement or other factors deemed appropriate by it. In no event shall the additional death benefit coverage described in subsection g. of this section apply to any former member receiving a retirement allowance unless such member was covered by the additional death benefit described in subsection e. of this section during the former member's last month of creditable service. No contributions toward the cost of additional death benefit coverage described in subsection g. of this section shall be required of a former member while he is receiving a retirement allowance pursuant to the provisions of this article.

g. Upon receipt of proper proofs of the death, occurring on or after July 1, 1968, of a former member who was covered for the additional death benefit coverage pursuant to subsection f. of this section, there shall be paid to such former member's beneficiary an amount equal to 1/4 of the compensation received by the former member in the last year of creditable service or in the year of the former member's highest contractual salary, whichever is higher.

h. The contributions of a member for the additional death benefit coverage shall be deducted from his compensation, but if there is no compensation from which such contributions may be deducted it shall be the obligation of the member, except as provided in subsection j. of this section, to make such contributions directly to the retirement system or as directed by the system; provided, however, that no contributions shall be required while a member remains in service after attaining age 70 but that his employer shall be required to pay into the fund on his behalf in such case an amount equal to the contributions otherwise required by the board of trustees in accordance with this section.

i. Any other provisions of this article notwithstanding the contributions of a member for the additional death benefit coverage under this section shall not be returnable to the member or his beneficiary in any manner, or for any reason whatsoever, nor shall any contributions made for the additional death benefit coverage be included in any annuity payable to any such member or to his beneficiary.

j. For the purpose of this section, a member shall be deemed to be in service (1) while he is disabled due to sickness or injury arising out of or in the course of his employment as a teacher to whom this article applies, is not engaged in any gainful occupation, and is receiving or entitled to receive periodic benefits (including any commutation of, or substitute for, such benefits) for loss of time on account of such disability under or by reason of workmen's compensation law, occupational disease law or similar legislation; or (2) for a period of no more than two years while on official leave of absence without pay if satisfactory evidence is presented to the retirement system that such leave of absence without pay is due to illness other than an illness to which (1) above applies. No contributions for the optional death benefit provided by this section shall be required of a member while he is deemed to be in service pursuant to the above provisions of this subsection j.

k. All other provisions of this section notwithstanding, this section and the benefits provided under this section shall not come into effect until a required percentage of the members shall have applied for the additional death benefit coverage under this section. This required percentage shall be fixed by the board of trustees. Any such percentage may be made applicable to male or female members only or to other groupings as determined by the board of trustees. Applications for such additional death benefit coverage shall be submitted to the system in such manner and upon such forms as the retirement system shall provide.

l. Any person becoming a member of the retirement system after benefits provided under this section shall have come into effect, who is, by sex or other characteristic, within the grouping to which the additional death benefit coverage under this section is applicable, for the first year of his membership in the retirement system shall be covered by the additional death benefit coverage provisions of this section with the benefit in the event of death, in the first year of membership only, being based upon contractual salary instead of compensation actually received and shall make contributions as fixed by the board of trustees during such period. Such member shall have the right to continue to be covered by the benefits of this section and to contribute therefor after his first year of membership has been completed. This subsection shall not apply in the case of such a member who has already attained his sixtieth birthday prior to becoming a member of the retirement system unless he shall furnish satisfactory evidence of insurability at the time of becoming a member.

6. This act shall take effect immediately and shall be retroactive to January 1, 1992.

Approved January 10, 1996.

CHAPTER 411

AN ACT concerning endangered and nongame species and amending P.L.1973, c.309.

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

1. Section 10 of P.L.1973, c.309 (C.23:2A-10) is amended to read as follows:

C.23:2A-10 Violations; penalties; enforcement.

10. a. If any person violates any of the provisions of this act or any rule, regulation or order adopted or issued pursuant to the provisions of this act, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to pro-

hibit and prevent such violation or violations and the court may proceed in the action in a summary manner.

b. Any person who violates the provisions of this act or any rule, regulation or order adopted or issued pursuant to this act shall be liable to a civil penalty of not less than $250 and not more than $5,000 for each offense, to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. Civil penalties recovered for violations hereof shall be remitted as provided in R.S.23:10-19. The Superior Court and municipal court shall have jurisdiction to enforce "the penalty enforcement law."

If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

c. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 412

AN ACT concerning the regulation of traffic by municipalities and counties and amending R.S.39:4-8.

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

1. 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 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.

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 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; and
(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.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 413

AN ACT concerning real property tax exemptions for certain contaminated real property, supplementing Title 54 of the Revised Statutes, and amending and supplementing P.L.1993, c.139.

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

C.54:4-3.150 Short title.

1. This act shall be known and may be cited as the "Environmental Opportunity Zone Act."

C.54:4-3.151 Findings, declarations relative to contaminated real property.

2. The Legislature finds that there are numerous properties that are underutilized or that have been abandoned and that are not being utilized for any commercial use because of contamination that exists at those properties; that abandoned contaminated properties harm society by causing a burden on municipal services while failing to contribute to the funding of those services; that a disproportionate percentage of these properties are located in older urban municipalities given the fact that these municipalities were once the center for industrial production; that the

revitalization of these properties will not only bring tax ratables to the municipality and other local governments, but will result in job creation and foster urban redevelopment; that one of the central tenets of the State Development and Redevelopment Plan is to redevelop urban areas with existing utilities and infrastructure and that the use of these now abandoned or underutilized sites for commercial purposes will make a significant contribution toward implementing the plan; that the federal "Clean Air Act" encourages the reindustrialization of urban areas as this would provide jobs near where people live thus reducing harmful air pollutants emitted from automobiles needed to travel distances to places of employment; and that it is in the economic interest of the State and the municipalities in which abandoned or underutilized contaminated properties are located to encourage the remediation of these properties so that they can be reused or fully used for commercial purposes.

C.54:4-3.152 Definitions.

3. As used in this act:

"Assessor" means the municipal tax assessor appointed pursuant to the provisions of chapter 9 of Title 40A of the New Jersey Statutes;

"Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

"Environmental opportunity zone" means any qualified real property that has been designated by the governing body as an environmental opportunity zone pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153);

"Qualified real property" means any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a discharge or threatened discharge of a contaminant, and which is listed in the most recent Department of Environmental Protection publication of known hazardous discharge sites in New Jersey prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.);

"Remediation" 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.

C.54:4-3.153 Designation of environmental opportunity zones.

4. The governing body of a municipality may, by ordinance, designate one or more qualified real properties in that municipal-

ity as an environmental opportunity zone. The ordinance adopted by the municipality shall list the qualified real properties designated as environmental opportunity zones. The designation of environmental opportunity zones shall be consistent with the permitted use of those properties pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

C.54:4-3.154 Ordinance providing for tax exemptions.

5. The governing body of a municipality which has adopted an ordinance pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153), may, by ordinance, provide for exemptions of real property taxes for environmental opportunity zones. The governing body shall include the following items in its enabling ordinance:

a. A property tax exemption term of ten years;

b. The application procedure for an exemption authorized under P.L.1995, c.413 (C.54:4-3.150 et seq.);

c. The method of computing payments in lieu of real property taxes pursuant to subsection b. of section 7 of P.L.1995, c.413 (C.54:4-3.156);

d. An approval method for exemption applications by the assessor or by ordinance on a per application basis; and

e. A requirement that the environmental opportunity zone will be remediated in compliance with the remediation standards adopted by the Department of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et al.), that the owner of the property will enter into a memorandum of agreement or administrative consent order with the department to perform the remediation and will complete the remediation pursuant to the agreement or order, and that, once remediated, the environmental opportunity zone will be used for a commercial or industrial purpose during the time period for which the real property tax exemption is given.

C.54:4-3.155 Required application for exemption.

6. No exemption shall be granted pursuant to P.L.1995, c.413 (C.54:4-3.150 et seq.) except upon written application filed with the assessor of the taxing district wherein the environmental opportunity zone is located and is approved by the governing body by resolution or ordinance, as required by the enabling ordinance. Every application shall be on a form prescribed by the Director of the Division of Taxation, in the Department of the Treasury, and provided for the use of claimants by the governing body of the municipality constituting the taxing district. Every application for an exemption may be approved and allowed by the governing body to the degree that the application is consistent

with the provisions of the enabling ordinance. The exemption shall not be granted by the governing body until the owner of the property enters into a memorandum of agreement or administrative consent order with the Department of Environmental Protection for the remediation. An exemption that is granted shall take effect upon the approval by the governing body and it shall be recorded and made a permanent part of the official tax records of the taxing district, which record shall contain a notice of the termination date of the exemption. The owner of the property shall deliver a copy of the approved exemption application to the Division of Local Government Services in the Department of Community Affairs.

C.54:4-3.156 Financial agreement evidencing approved exemption.

7. a. Each approved exemption shall be evidenced by a financial agreement between the municipality and the applicant. The agreement shall be prepared by the applicant and shall contain the representations that are required by the enabling ordinance. The agreement shall provide for the applicant to annually pay to the municipality an amount in lieu of real property taxes, to be computed according to subsection b. of this section. With the approval of the governing body, the agreement may be assigned to a subsequent owner of the environmental opportunity zone.

b. Payments in lieu of real property taxes may be computed as a portion of the real property taxes otherwise due, according to the following schedule:

(1) In the first tax year following execution of a memorandum of agreement or administrative consent order, no payment in lieu of taxes otherwise due;

(2) In the second tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 10% of taxes otherwise due;

(3) In the third tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 20% of taxes otherwise due;

(4) In the fourth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 30% of taxes otherwise due;

(5) In the fifth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 40% of taxes otherwise due;

(6) In the sixth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 50% of the taxes otherwise due;

(7) In the seventh tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 60% of the taxes otherwise due;

(8) In the eighth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 70% of the taxes otherwise due;

(9) In the ninth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 80% of the taxes otherwise due;

(10) In the tenth and all subsequent tax years following execution of a memorandum of agreement or administrative consent order, the exemption shall expire and the full amount of the assessed real property taxes, taking into account the value of the real property in its remediated state, shall be due.

c. For the purposes of this section, the amount of "taxes otherwise due" shall be determined by using the assessed valuation of the environmental opportunity zone at the time of the approval by the assessor of the exemption, regardless of any improvement made to the environmental opportunity zone thereafter.

d. Notwithstanding any other provision in P.L.1995, c.413 (C.54:4-3.150 et seq.), if at any time the governing body of the municipality finds that the memorandum of agreement for remediation of the environmental opportunity zone has been terminated at the option of the applicant, unless if an administrative consent order is issued in its place, or that any of the conditions in the ordinance as required by subsection e. of section 5 of P.L.1995, c.413 (C.54:4-3.154) are not met, the period of the property tax exemption shall end.

C.54:4-3.157 Payments in quarterly installments.

8. The payments required pursuant to section 7 of P.L.1995, c.413 (C.54:4-3.156) shall be made in quarterly installments according to the same schedule as real property taxes are due and payable. Failure to make these payments shall result in the termination of the exemption. In addition to the remedy set forth herein, the requirements imposed pursuant to section 7 of P.L.1995, c.413 (C.54:4-3.156) shall be enforced in the same manner as is provided for real property taxes pursuant to Title 54 of the Revised Statutes.

C.54:4-3.158 Remedial action workplan.

9. a. The Department of Environmental Protection shall take final action on a technically complete remedial action workplan, submitted for a remediation in an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), within 45 days of receipt of the submission in the case of soil remediations, and within 90 days of receipt of the submission in the case of remediations involving groundwater or surface water.

b. Any owner or operator of an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154) shall be exempt from the requirement to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3).

10. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to read as follows:

C.58:10B-6 Financial assistance and grants from the fund; allocations.

28. a. Except for moneys deposited in the remediation fund for specific purposes, financial assistance and grants from the remediation fund shall be rendered for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written joint determination by the authority and the department that it is in the public interest, financial assistance and grants dedicated for the purposes and in the percentages set forth in paragraph (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for financial assistance to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for financial assistance and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which

the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for financial assistance to persons or municipal governmental entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court;

(5) At least 20% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), as a condition of the closure, transfer, or termination of operations at that industrial establishment;

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal governmental entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000;

(7) At least 5% of the moneys shall be allocated for loans to persons, other than municipal governmental entities, who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154); and

(8) Five percent of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraphs (1) through (7) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant to this paragraph, the authority shall give priority to financial assistance applications that meet the criteria enumerated in paragraph (3) of this subsection.

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, except that the rate shall be no lower than five percent. Financial assistance and grants may be issued for up to 100% of the estimated applicable remediation cost, except that the cumulative maximum amount of financial assistance which may be issued to a person other than a governmental entity in any calendar year, for one or more properties, shall be $1,000,000. Financial assistance and grants to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for financial assistance from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3).

d. The authority may use a sum that represents up to 2% of the moneys issued as financial assistance or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of financial assistance and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and

Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for financial assistance and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for financial assistance and grants for the current calendar year, the amount of financial assistance and grants issued for the previous calendar year and the category for which each financial assistance and grant was rendered, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote the redevelopment and use of existing industrial sites.

11. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 414

AN ACT to validate certain proceedings for the issuance of bonds and notes issued or to be issued pursuant to such proceedings.

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

1. All proceedings heretofore had or taken by any municipality or county or by any officials thereof for or in connection with the authorization or issuance of bonds or notes of the municipality or county pursuant to the "Local Bond Law," N.J.S.40A:2-1 et seq., and any ordinance with respect to such bonds or notes heretofore adopted and any bonds or notes of the municipality or county issued or to be issued in pursuance of such proceedings or ordinance, are hereby ratified, validated and confirmed notwithstanding that a supplemental debt statement was not prepared and filed as required by the provisions of N.J.S.40A:2-10 and notwithstanding that the ordinance was not posted or published following introduction in accordance with the provisions of N.J.S.40A:2-17; provided, however, that a supplemental debt statement heretofore has been prepared and filed in the places required by N.J.S.40A:2-10; and provided further, however, that no action, suit or other proceeding of any nature to contest the validity of such proceedings has heretofore been instituted prior to the date on which this act takes effect and within the time fixed therefor by

or pursuant to law or rule of court, or when such time has not heretofore expired, is instituted within 30 days after the effective date of this act.

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 415

AN ACT requiring health insurance benefits for Pap smears and supplementing Title 17 of the Revised Statutes and Title 17B of the New Jersey Statutes.

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

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 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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.

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.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 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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.

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-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 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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.

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.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 49 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of 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.

This section shall apply to all group health insurance policies in which the health insurer has reserved the right to change the premium.

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 on or after the effective date of this act unless the health maintenance organization offers health care services to any enrollee 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.

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.

6. This act shall take effect on the 30th day after enactment.

Approved January 10, 1996.

CHAPTER 416

AN ACT concerning termination of parental rights and amending P.L.1991, c.275 and P.L.1951, c.138.

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

1. Section 6 of P.L.1991, c.275 (C.30:4C-12.1) is amended to read as follows:

C.30:4C-12.1 Search for relatives; assessment of abilities.

6. a. In any case in which the Division of Youth and Family Services accepts a child in its care or custody, including placement, the division shall initiate a search for relatives who may be willing and able to provide the care and support required by the child. The search shall be initiated within 30 days of the division's acceptance of the child in its care or custody. The search will be completed when all sources contacted have either responded to the inquiry or failed to respond within 45 days. The division shall complete an assessment of each interested relative's ability to provide the care and support, including placement, required by the child.

b. If the division determines that the relative is unwilling or unable to assume the care of the child, the division shall not be required to re-evaluate the relative. The division shall inform the relative in writing of:

(1) the reasons for the division's determination;

(2) the responsibility of the relative to inform the division if there is a change in the circumstances upon which the determination was made;

(3) the possibility that termination of parental rights may occur if the child remains in foster care for more than six months; and

(4) the right to seek review by the division of such determination.

c. The division may decide to pursue the termination of parental rights if the division determines that termination of parental rights is in the child's best interests.

2. Section 15 of P.L.1951, c.138 (C.30:4C-15) is amended to read as follows:

C.30:4C-15 Guardianship petition.

15. Whenever (a) it appears that a court wherein a complaint has been proffered as provided in chapter 6 of Title 9 of the

Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child; or (b) (Deleted by amendment, P.L.1991, c.275); (c) it appears that the best interests of any child under the care or custody of the Division of Youth and Family Services require that he be placed under guardianship; or (d) it appears that a parent or guardian of a child, following the acceptance of such child by the division pursuant to section 11 or 12 of P.L.1951, c.138 (C.30:4C-11 or 12), or following the placement or commitment of such child in the care of an authorized agency, whether in an institution or in a foster home, and notwithstanding the diligent efforts of such agency to encourage and strengthen the parental relationship, has failed for a period of one year to remove the circumstances or conditions that led to the removal or placement of the child, although physically and financially able to do so, notwithstanding the division's diligent efforts to assist the parent or guardian in remedying the conditions; or (e) the parent has abandoned the child; a petition, setting forth the facts in the case, may be filed with the Family Part of the Chancery Division of the Superior Court in the county where such child may be at the time of the filing of such petition. A petition as provided in this section may be filed by any person or any association or agency, interested in such child, or by the division in the circumstances set forth in items (c), (d) and (e) hereof.

3. Section 7 of P.L.1991, c.275 (C.30:4C-15.1) is amended to read as follows:

C.30:4C-15.1 Termination of parental rights.

7. a. The division shall initiate a petition to terminate parental rights on the grounds of the "best interests of the child" pursuant to subsection (c) of section 15 of P.L.1951, c.138 (C.30:4C-15) if the following standards are met:

(1) The child's health and development have been or will continue to be endangered by the parental relationship;

(2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm. Such harm may include evidence that separating the child from his foster parents would cause serious and enduring emotional or psychological harm to the child;

(3) The division has made diligent efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights; and

(4) Termination of parental rights will not do more harm than good.

b. The division shall initiate a petition to terminate parental rights on the ground that the "parent has abandoned the child" pursuant to subsection (e) of section 15 of P.L.1951, c.138 (C.30:4C-15) if the following standards are met:

(1) a court finds that for a period of six or more months:

(a) the parent, although able to have contact, has had no contact with the child, the child's foster parent or the division; and

(b) the parent's whereabouts are unknown, notwithstanding the division's diligent efforts to locate the parent; or

(2) where the identities of the parents are unknown and the division has exhausted all reasonable methods of attempting identification, the division may immediately file for termination of parental rights upon the completion of the law enforcement investigation.

c. As used in this section and in section 15 of P.L.1951, c.138 (C.30:4C-15) "diligent efforts" mean reasonable attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, but not limited to:

(1) consultation and cooperation with the parent in developing a plan for appropriate services;

(2) providing services that have been agreed upon, to the family, in order to further the goal of family reunification;

(3) informing the parent at appropriate intervals of the child's progress, development and health; and

(4) facilitating appropriate visitation.

4. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 417

AN ACT concerning certain offenses by fraudulent application for services and amending N.J.S.2C:21-17 and N.J.S.2C:43-3.

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

1. N.J.S.2C:21-17 is amended to read as follows:

Impersonation; disorderly persons offense, crime.

a. A person is guilty of a disorderly persons offense when he:

(1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for purpose of obtaining a pecuniary benefit for himself or another or to injure or defraud another;

(2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another; or

(3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services.

b. A person is guilty of an offense if, in the course of making an oral or written application for services, he impersonates another, assumes a false identity or makes a false or misleading statement with the purpose of obtaining services and avoiding payment for prior services. If the payment sought to be avoided is $75,000 or more, the offender is guilty of a crime of the second degree. If the payment sought to be avoided exceeds $1,000, but is less than $75,000, the offender is guilty of a crime of the third degree. If the payment sought to be avoided is $1,000 or less, the offender is guilty of a crime of the fourth degree. Purpose to avoid payment for prior services may be presumed upon proof that the person has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making oral or written application for services.

2. N.J.S.2C:43-3 is amended to read as follows:

Fines and restitutions.

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

a. $100,000.00, when the conviction is of a crime of the first or second degree;

b. $7,500.00, when the conviction is of a crime of the third or fourth degree;

c. $1,000.00, when the conviction is of a disorderly persons offense;

d. $500.00, when the conviction is of a petty disorderly persons offense;

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the terms "gain" means the amount of money or the value of property derived by the offender and "loss" means the amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term "victim" shall mean a person who suffers a 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 against that person, or in the case of a homicide, the nearest relative of the victim. The terms "gain" and "loss" shall also mean, where appropriate, the amount of any tax, fee, penalty and interest avoided, evaded, or otherwise unpaid or improperly retained or disposed of;

f. Any higher amount specifically authorized by another section of this code or any other statute;

g. Up to twice the amounts authorized in subsection a., b., c. or d. of this section, in the case of a second or subsequent conviction of any tax offense defined in Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, as amended and supplemented, or of any offense defined in chapter 20 or 21 of this code;

h. In the case of violations of chapter 35, any higher amount equal to three times the street value of the controlled dangerous substance or controlled substance analog. The street value for purposes of this section shall be determined pursuant to subsection e. of N.J.S.2C:44-2.

The restitution ordered paid to the victim shall not exceed the victim's loss, except that in any case involving the failure to pay any State tax, the amount of restitution to the State shall be the full amount of the tax avoided or evaded, including full civil penalties and interest as provided by law. In any case where the victim of the offense is any department or division of State government, the court shall order restitution to the victim. Any

restitution imposed on a person shall be in addition to any fine which may be imposed pursuant to this section.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 418

AN ACT concerning the deductibility of interest owed to certain stockholders of a corporation under the corporation business tax, amending P.L.1945, c.162.

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

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

C.54:10A-4 Definitions.

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

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

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

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

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in

paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) (Deleted by amendment, P.L.1995, c.418.)

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

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

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

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

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

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

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

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

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

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign part-

nership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

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

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

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

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

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

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

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

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

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

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

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C.§ 2091 et seq.), stock and mutual insurance companies

duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

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

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

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

2. This act shall take effect immediately and apply to fiscal or calendar accounting years ending after its enactment.

Approved January 10, 1996.

CHAPTER 419

AN ACT providing for the annual Governor's Air and Space Medal award, establishing an Air and Space Medal Nominating Committee and supplementing Title 6 of the Revised Statutes.

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

C.6:1-98 Governor's Air and Space Medal.

1. a. Each year during the month of May, Aviation Awareness Month, an award shall be presented by the Governor or the Governor's designee, in a public ceremony, to an individual currently or formerly residing in this State, or to an organization located in the State of New Jersey, in recognition of the individual's or organization's outstanding achievement in aeronautics or space exploration. This award shall be known as the Governor's Air and Space Medal, hereinafter, "the medal."

b. Nominations for the medal may be submitted by any individual in the State, at any time during the year, to the Executive Director of Aeronautics, in the Division of Aeronautics in the Department of Transportation, hereinafter, "the executive director," with a written statement setting forth the reasons for the nomination.

C.6:1-99 Governor's Air and Space Medal Nominating Committee established.

2. a. There is established, in the Division of Aeronautics in the Department of Transportation, a committee to be known as the Governor's Air and Space Medal Nominating Committee, hereinafter the "nominating committee," which shall review and evaluate the candidates from the nominations submitted pursuant to section 1 of this act, and recommend one candidate to the Governor who shall present the medal to that candidate pursuant to this act. The nominating committee shall consist of seven members as follows: the executive director, ex officio, or the designee thereof, as a voting member, and the following six public members appointed by the Governor: a member of the New Jersey Aviation Advisory Council; a member of the Aviation Hall of Fame and Museum of New Jersey; a trustee of the Air Victory Museum; a representative of the Mid-Atlantic Aviation Coalition; a representative of Aero New Jersey; and a journalist or author who writes extensively on aviation issues.

b. Each appointed public member shall serve for a term of five years, except that, of those first appointed, two shall serve for a

term of two years, two shall serve for a term of three years, and two shall serve for a term of five years, as the Governor may designate upon appointment.

c. Each appointed public member shall hold office for the term of appointment and until a successor is 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.

d. Each appointed public member may be removed by the Governor for cause after a public hearing and may be suspended by the Governor pending the completion of the hearing. The initial public members shall be appointed within 30 days of the effective date of this act.

e. The executive director shall serve as chairman of the nominating committee. Meetings of the nominating committee shall be held at such times and places as directed by the executive director.

f. The members of the nominating committee shall serve without compensation, but the nominating committee may reimburse its members for actual and necessary expenses incurred in the discharge of their duties, within the limits of any funds appropriated or otherwise made available for that purpose. Notwithstanding the provisions of any other law, rule or regulation to the contrary, no member of the nominating committee shall be deemed to have forfeited nor shall that member forfeit the member's office or employment or any benefits or emoluments thereof by reason of the member's service as ex officio member of the nominating committee.

3. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 420

AN ACT appropriating from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $5,515,445 for the purpose of making grants, as awarded by the New Jersey Historic Trust, for certain historic preservation projects in northern New Jersey, and the sum of $73,750 for the purpose of funding the monitoring and enforcement of historic preservation easements, restrictions, or other requirements associated with those projects.

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

1. a. There is appropriated to the New Jersey Historic Trust from the "1992 Historic Preservation Fund" established pursuant to section 25 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $5,515,445 for the purpose of making grants, as awarded by the New Jersey Historic Trust, for historic preservation projects listed in this subsection. The sum appropriated pursuant to this subsection shall include administrative costs of the New Jersey Historic Trust incurred in administering this act. The following projects are eligible for funding with the monies appropriated pursuant to this subsection:

COUNTY	PROJECT NAME	LOCATION	NAME OF ORGANIZATION	GRANT AWARD
Essex	Morgan's Farm	Cedar Grove	Cedar Grove Historical Society	$58,020
Essex	Immaculate Conception RC Church	Montclair	Immaculate Conception RC Church	482,049
Essex	Newark Day Center	Newark	Newark Day Center	199,780
Essex	Queen of Angels Church	Newark	Queen of Angels Church	100,000
Essex	Clinton Memorial AME Zion Church	Newark	Clinton Memorial AME Zion Church	138,210
Essex	Essex Club	Newark	New Jersey Historical Society	1,250,000
Essex	St. Patrick's Pro-Cathedral RC Church	Newark	St. Patrick's Pro-Cathedral RC Church	205,725
Essex	Metropolitan Baptist Church	Newark	Greater Newark Conservancy, Inc.	200,000
Hudson	Barrow Mansion	Jersey City	Barrow Mansion Development Corp.	278,143
Middlesex	Edison Tower	Edison	Division of Parks and Forestry, NJDEP	781,527
Middlesex	Kirkpatrick Chapel	New Brunswick	Rutgers University	147,900
Middlesex	Proprietary House	Perth Amboy	Proprietary House Association	99,591
Middlesex	War Memorial	South River	Borough of South River	210,630

Morris	Bridget Smith House	Mine Hill	Township of Mine Hill	27,000
Morris	Acorn Hall	Morristown	Morris County Historical Society	175,355
Morris	Historic Speedwell	Morristown	Historic Speedwell	65,225
Morris	Craftsman Farms	Parsippany-Troy Hills	Township of Parsippany-Troy Hills	99,825
Sussex	High Breeze Farm	Vernon	Division of Parks and Forestry, NJDEP	152,973
Union	Deserted Village of Feltville: Masker's Barn	Berkeley Heights	Union County Parks & Recreation Division	426,834
Union	Reeves-Reed Arboretum	Summit	Reeves-Reed Arboretum, Inc.	416,658
TOTAL				$5,515,445

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. There is appropriated to the New Jersey Historic Trust from the "1992 Historic Preservation Fund" established pursuant to section 25 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $73,750 for the purpose of funding the monitoring and enforcement of historic preservation easements, restrictions, or other requirements associated with the projects funded pursuant to subsection a. of this section.

2. To the extent that monies remain available after the projects listed in section 1 of this act are offered funding from the "1992 Historic Preservation Fund," the projects listed in P.L.1995, c.421 shall be eligible for funding, including administrative costs of the New Jersey Historic Trust in administering this section, in a sequence consistent with the priority system established by the New Jersey Historic Trust, and shall require the approval of the Joint Budget Oversight Committee or its successor.

3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1992, c.88.

4. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 421

AN ACT appropriating from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $4,459,120 for the purpose of making grants, as awarded by the New Jersey Historic Trust, for certain historic preservation projects in southern New Jersey, and the sum of $66,250 for the purpose of funding the monitoring and enforcement of historic preservation easements, restrictions, or other requirements associated with those projects.

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

1. a. There is appropriated to the New Jersey Historic Trust from the "1992 Historic Preservation Fund" established pursuant to section 25 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $4,459,120 for the purpose of making grants, as awarded by the New Jersey Historic Trust, for historic preservation projects listed in this subsection. The sum appropriated pursuant to this subsection shall include administrative costs of the New Jersey Historic Trust incurred in administering this act. The following projects are eligible for funding with the monies appropriated pursuant to this subsection:

COUNTY	PROJECT NAME	LOCATION	NAME OF ORGANIZATION	GRANT AWARD
Atlantic	Lucy, the Mar-Gate Elephant	Margate	Save Lucy Committee, Inc.	$305,190
Burlington	Collins-Jones House	Burlington City	Burlington County Historical Society	107,400
Burlington	Old City Hall	Burlington City	City of Burlington	514,927
Burlington	William R. Allen School	Burlington City	City of Burlington	354,260
Burlington	Mt. Holly Friends Meeting House	Mount Holly	Mount Holly Monthly Meeting of Friends	140,723
Camden	City Water Works	Gloucester City	Gloucester City	180,000
Camden	Peter Mott House	Lawnside	Lawnside Historical Society	48,624
Cape May	Cape May Lighthouse	Cape May Point	Mid-Atlantic Center for the Arts (MAC)	512,594
Cape May	Ocean City City Hall	Ocean City	City of Ocean City	634,046

Glouces-ter	Trinity Episcopal "Old Swedes" Church	Swedesboro	Trinity Episcopal "Old Swedes" Church	115,610
Mercer	Lawrenceville School	Lawrence	Lawrenceville School	113,210
Mercer	St. Michael's Episcopal Church	Trenton	St. Michael's Episcopal Church	210,795
Monmouth	Longstreet Farm	Holmdel	Monmouth County Park System	135,000
Monmouth	Sutfin-Herbert House	Manalapan	Friends of Monmouth Battle-Field for NJDEP	228,978
Monmouth	Marlpit Hall	Middletown	Monmouth County Historical Association	390,219
Monmouth	Walnford Park	Upper Freehold	Monmouth County Park System	467,544
TOTAL				$4,459,120

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. There is appropriated to the New Jersey Historic Trust from the "1992 Historic Preservation Fund" established pursuant to section 25 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of $66,250 for the purpose of funding the monitoring and enforcement of historic preservation easements, restrictions, or other requirements associated with the projects funded pursuant to subsection a. of this section.

2. To the extent that monies remain available after the projects listed in section 1 of this act are offered funding from the "1992 Historic Preservation Fund," the projects listed in P.L.1995, c.420 shall be eligible for funding, including administrative costs of the New Jersey Historic Trust in administering this section, in a sequence consistent with the priority system established by the New Jersey Historic Trust, and shall require the approval of the Joint Budget Oversight Committee or its successor.

3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1992, c.88.

4. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 422

AN ACT concerning job training programs 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.43:21-7 is amended to read as follows:

Contributions.

43:21-7. Contributions. Employers other than governmental entities, whose benefit financing provisions are set forth in section 4 of P.L.1971, c.346 (C.43:21-7.3), and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in section 3 of P.L.1971, c.346 (C.43:21-7.2), shall pay to the controller for the unemployment compensation fund, contributions as set forth in subsections (a), (b) and (c) hereof, and the provisions of subsections (d) and (e) shall be applicable to all employers, consistent with the provisions of the "unemployment compensation law" and the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

(a) Payment.

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter (R.S.43:21-1 et seq.), with respect to having individuals in his employ during that calendar year, at the rates and on the basis hereinafter set forth. Such contributions shall become due and be paid by each employer to the controller for the fund, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to $0.005 or more, in which case it shall be increased to $0.01.

(b) Rate of contributions. Each employer shall pay the following contributions:

(1) For the calendar year 1947, and each calendar year thereafter, 2 7/10% of wages paid by him during each such calendar year, except as otherwise prescribed by subsection (c) of this section.

(2) The "wages" of any individual, with respect to any one employer, as the term is used in this subsection (b) and in subsections (c), (d) and (e) of this section 7, shall include the first $4,800.00 paid during calendar year 1975, for services performed

either within or without this State; provided that no contribution shall be required by this State with respect to services performed in another state if such other state imposes contribution liability with respect thereto. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid wages with respect to employment equal to the first $4,800.00 paid during calendar year 1975, any wages paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.

(3) For calendar years beginning on and after January 1, 1976, the "wages" of any individual, as defined in the preceding paragraph (2) of this subsection (b), shall be established and promulgated by the Commissioner of Labor on or before September 1 of the preceding year and shall be 28 times the Statewide average weekly remuneration paid to workers by employers, as determined under R.S.43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, provided that if the amount of wages so determined for a calendar year is less than the amount similarly determined for the preceding year, the greater amount will be used; provided, further, that if the amount of such wages so determined does not equal or exceed the amount of wages as defined in subsection (b) of section 3306 of the Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1986 (26 U.S.C.§3306(b)), the wages as determined in this paragraph in any calendar year shall be raised to equal the amount established under the Federal Unemployment Tax Act for that calendar year.

(c) Future rates based on benefit experience.

(1) A separate account for each employer shall be maintained and this shall be credited with all the contributions which he has paid on his own behalf on or before January 31 of any calendar year with respect to employment occurring in the preceding calendar year; provided, however, that if January 31 of any calendar year falls on a Saturday or Sunday, an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this chapter

(R.S.43:21-1 et seq.) shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid with respect to benefit years commencing on and after January 1, 1953, to any individual on or before December 31 of any calendar year with respect to unemployment in such calendar year and in preceding calendar years shall be charged against the account or accounts of the employer or employers in whose employment such individual established base weeks constituting the basis of such benefits. Benefits paid under a given benefit determination shall be charged against the account of the employer to whom such determination relates. When each benefit payment is made, either a copy of the benefit check or other form of notification shall be promptly sent to the employer against whose account the benefits are to be charged. Such copy or notification shall identify the employer against whose account the amount of such payment is being charged, shall show at least the name and social security account number of the claimant and shall specify the period of unemployment to which said check applies. If the total amount of benefits paid to a claimant and charged to the account of the appropriate employer exceeds 50% of the total base year, base week wages paid to the claimant by that employer, then such employer shall have canceled from his account such excess benefit charges as specified above.

Each employer shall be furnished an annual summary statement of benefits charged to his account.

(2) Regulations may be prescribed for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(3) No employer's rate shall be lower than 5.4% unless assignment of such lower rate is consistent with the conditions applicable to additional credit allowance for such year under section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C.§3303(a)(1)), any other provision of this section to the contrary notwithstanding.

(4) Employer Reserve Ratio. (A) Each employer's rate shall be 2 8/10%, except as otherwise provided in the following provisions. No employer's rate for the 12 months commencing July 1 of any calendar year shall be other than 2 8/10%, unless as of the preceding January 31 such employer shall have paid contributions with respect to wages paid in each of the three calendar years immediately preceding such year, in which case such employer's

rate for the 12 months commencing July 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions, paid on his own behalf, for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be:

(1) 2 5/10%, if such excess equals or exceeds 4%, but less than 5%, of his average annual payroll (as defined in paragraph (2), subsection (a) of R.S.43:21-19);

(2) 2 2/10%, if such excess equals or exceeds 5%, but is less than 6%, of his average annual payroll;

(3) 1 9/10%, if such excess equals or exceeds 6%, but is less than 7%, of his average annual payroll;

(4) 1 6/10%, if such excess equals or exceeds 7%, but is less than 8%, of his average annual payroll;

(5) 1 3/10%, if such excess equals or exceeds 8%, but is less than 9%, of his average annual payroll;

(6) 1%, if such excess equals or exceeds 9%, but is less than 10%, of his average annual payroll;

(7) 7/10 of 1%, if such excess equals or exceeds 10%, but is less than 11%, of his average annual payroll;

(8) 4/10 of 1%, if such excess equals or exceeds 11% of his average annual payroll.

(B) If the total of an employer's contributions, paid on his own behalf, for all past periods for the purposes of this paragraph (4), is less than the total benefits charged against his account during the same period, his rate shall be:

(1) 4%, if such excess is less than 10% of his average annual payroll;

(2) 4 3/10%, if such excess equals or exceeds 10%, but is less than 20%, of his average annual payroll;

(3) 4 6/10%, if such excess equals or exceeds 20% of his average annual payroll.

(C) Specially assigned rates. If no contributions were paid on wages for employment in any calendar year used in determining the average annual payroll of an employer eligible for an assigned rate under this paragraph (4), the employer's rate shall be specially assigned as follows:

(i) if the reserve balance in its account is positive, its assigned rate shall be the highest rate in effect for positive balance accounts for that period, or 5.4%, whichever is higher, and (ii) if the reserve balance in its account is negative, its assigned rate shall be the highest rate in effect for deficit accounts for that period.

(D) The contribution rates prescribed by subparagraphs (A) and (B) of this paragraph (4) shall be increased or decreased in accordance with the provisions of paragraph (5) of this subsection (c) for experience rating periods through June 30, 1986.

(5) (A) Unemployment Trust Fund Reserve Ratio. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 4% but is less than 7% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by 3/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection. If on March 31 of any calendar year the balance of the unemployment trust fund exceeds 2 1/2% but is less than 4% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by 6/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection.

If on March 31 of any calendar year the balance of the unemployment trust fund is less than 2 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer (1) eligible for a contribution rate calculation based upon benefit experience, shall be increased by (i) 6/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (3), (4)(A) or (4)(B) of this subsection, and (ii) an additional amount equal to 20% of the total rate established herein, provided, however, that the final contribution rate for each employer shall be computed to the nearest multiple of 1/10% if not already a multiple thereof; (2) not eligible for a contribution rate calculation based upon benefit experience, shall be increased by 6/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (4) of this subsection. For the period commencing July 1, 1984 and ending June 30, 1986, the contribution rate for each employer liable to pay contributions under R.S.43:21-7 shall be increased by a factor of 10% computed to the nearest multiple of 1/10% if not already a multiple thereof.

(B) If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 10% but is less than

12 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by 3/10 of 1% under the contribution rate otherwise established under the provisions of paragraphs (3) and (4) of this subsection; provided that in no event shall the contribution rate of any employer be reduced to less than 4/10 of 1%. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 12 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by 6/10 of 1% if his account for all past periods reflects an excess of contributions paid over total benefits charged of 3% or more of his average annual payroll, otherwise by 3/10 of 1% under the contribution rate otherwise established under the provisions of paragraphs (3) and (4) of this subsection; provided that in no event shall the contribution rate of any employer be reduced to less than 4/10 of 1%.

(C) The "balance" in the unemployment trust fund, as the term is used in subparagraphs (A) and (B) above, shall not include moneys credited to the State's account under section 903 of the Social Security Act, as amended (42 U.S.C.§1103), during any period in which such moneys are appropriated for the payment of expenses incurred in the administration of the "unemployment compensation law."

(D) Prior to July 1 of each calendar year the controller shall determine the Unemployment Trust Reserve Ratio, which shall be calculated by dividing the balance of the unemployment trust fund as of the prior March 31 by total taxable wages reported to the controller by all employers as of March 31 with respect to their employment during the last calendar year.

(E) With respect to experience rating years beginning on or after July 1, 1986, the new employer rate or the unemployment experience rate of an employer under this section shall be the rate which appears in the column headed by the Unemployment Trust Fund Reserve Ratio as of the applicable calculation date and on the line with the Employer Reserve Ratio, as defined in paragraph 4 of this subsection (R.S.43:21-7 (c)(4)), as set forth in the following table:

EXPERIENCE RATING TAX TABLE

Fund Reserve Ratio[1]

Employer Reserve Ratio[2]	10.00% and Over A	7.00% to 9.99% B	4.00% to 6.99% C	2.50% to 3.99% D	2.49% and Under E
Positive Reserve Ratio:					
17% and over	0.3	0.4	0.5	0.6	1.2
16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
Deficit Reserve Ratio:					
-0.00% to -2.99%	3.4	4.3	5.1	5.6	6.1
-3.00% to -5.99%	3.4	4.3	5.1	5.7	6.2
-6.00% to -8.99%	3.5	4.4	5.2	5.8	6.3
-9.00% to-11.99%	3.5	4.5	5.3	5.9	6.4
-12.00%to-14.99%	3.6	4.6	5.4	6.0	6.5
-15.00%to-19.99%	3.6	4.6	5.5	6.1	6.6
-20.00%to-24.99%	3.7	4.7	5.6	6.2	6.7
-25.00%to-29.99%	3.7	4.8	5.6	6.3	6.8
-30.00%to-34.99%	3.8	4.8	5.7	6.3	6.9
-35.00%and under	5.4	5.4	5.8	6.4	7.0
New Employer Rate	2.8	2.8	2.8	3.1	3.4

[1]Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

[2]Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(F) With respect to experience rating years beginning on or after July 1, 1986, if the balance of the unemployment trust fund as of the prior March 31 is negative, the contribution rate for each employer

liable to pay contributions, as computed under subparagraph E of this paragraph (5), shall be increased by a factor of 10% computed to the nearest multiple of 1/10% if not already a multiple thereof.

(G) On or after January 1, 1993, notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by 0.1%, except that, during any experience rating year in which the fund reserve ratio is equal to or greater than 7.00%, there shall be no decrease pursuant to this subparagraph (G) in the contribution of any employer who has a deficit reserve ratio of negative 35.00% or under.

(H) On or after January 1, 1993 until December 31, 1993, notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by a factor of 52.0% computed to the nearest multiple of 1/10%, except that, if an employer has a deficit reserve ratio of negative 35.0% or under, the employer's rate of contribution shall not be reduced pursuant to this subparagraph (H) to less than 5.4%. The amount of the reduction in the employer contributions stipulated by this subparagraph (H) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraph (G) of this paragraph (5), except that the rate of contribution of an employer who has a deficit reserve ratio of negative 35.0% or under shall not be reduced pursuant to this subparagraph (H) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

On or after January 1, 1994 until December 31, 1995, except as provided pursuant to subparagraph (I) of this paragraph (5), notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by a factor of 36.0% computed to the nearest multiple of 1/10%, except that, if an employer has a deficit reserve ratio of negative 35.0% or under, the employer's rate of contribution shall not be reduced pursuant to this subparagraph (H) to less than 5.4%. The amount of the reduction in the employer contributions stipulated by this subparagraph (H) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraph (G) of this paragraph (5), except that the rate of contribution of an employer who has a deficit reserve ratio of negative 35.0% or under shall not be reduced pursuant to this

subparagraph (H) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

(I) If the fund reserve ratio decreases to a level of less than 4.00% on March 31 of calendar year 1994 or calendar year 1995, the provisions of subparagraph (H) of this paragraph (5) shall cease to be in effect as of July 1 of that calendar year.

(6) Additional contributions.

Notwithstanding any other provision of law, any employer who has been assigned a contribution rate pursuant to subsection (c) of this section for the year commencing July 1, 1948, and for any year commencing July 1 thereafter, may voluntarily make payment of additional contributions, and upon such payment shall receive a recomputation of the experience rate applicable to such employer, including in the calculation the additional contribution so made. Any such additional contribution shall be made during the 30-day period following the date of the mailing to the employer of the notice of his contribution rate as prescribed in this section, unless, for good cause, the time for payment has been extended by the controller for not to exceed an additional 60 days; provided that in no event may such payments which are made later than 120 days after the beginning of the year for which such rates are effective be considered in determining the experience rate for the year in which the payment is made. Any employer receiving any extended period of time within which to make such additional payment and failing to make such payment timely shall be, in addition to the required amount of additional payment, a penalty of 5% thereof or $5.00, whichever is greater, not to exceed $50.00. Any adjustment under this subsection shall be made only in the form of credits against accrued or future contributions.

(7) Transfers.

(A) Upon the transfer of the organization, trade or business, or substantially all the assets of an employer to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, the controller shall transfer the employment experience of the predecessor employer to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer, pursuant to regulation, if it is determined that the employment experience of the predecessor employer with respect to the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. Unless the predecessor employer was owned or controlled (by legally

enforceable means or otherwise), directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such successor in interest, within four months of the date of such transfer of the organization, trade, assets or business, or thereafter upon good cause shown, files a written notice protesting the transfer of the employment experience of the predecessor employer.

(B) An employer who transfers part of his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, may jointly make application with such successor in interest for transfer of that portion of the employment experience of the predecessor employer relating to the portion of the organization, trade, assets or business transferred to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer. The transfer of employment experience may be allowed pursuant to regulation only if it is found that the employment experience of the predecessor employer with respect to the portion of the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. Credit shall be given to the successor in interest only for the years during which contributions were paid by the predecessor employer with respect to that part of the organization, trade, assets or business transferred.

(C) A transfer of the employment experience in whole or in part having become final, the predecessor employer thereafter shall not be entitled to consideration for an adjusted rate based upon his or its experience or the part thereof, as the case may be, which has thus been transferred. A successor in interest to whom employment experience or a part thereof is transferred pursuant to this subsection shall, as of the date of the transfer of the organization, trade, assets or business, or part thereof, immediately become an employer if not theretofore an employer subject to this chapter (R.S.43:21-1 et seq.).

(d) Contributions of workers to the unemployment compensation fund and the State disability benefits fund.

(1) (A) For periods after January 1, 1975, each worker shall contribute to the fund 1% of his wages with respect to his employment with an employer, which occurs on and after January 1, 1975, after

such employer has satisfied the condition set forth in subsection (h) of R.S.43:21-19 with respect to becoming an employer; provided, however, that such contributions shall be at the rate of 1/2 of 1% of wages paid with respect to employment while the worker is in the employ of the State of New Jersey, or any governmental entity or instrumentality which is an employer as defined under R.S.43:21-19(h)(5), or is covered by an approved private plan under the "Temporary Disability Benefits Law" or while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31).

(B) Effective January 1, 1978 there shall be no contributions by workers in the employ of any governmental or nongovernmental employer electing or required to make payments in lieu of contributions unless the employer is covered by the State plan under the "Temporary Disability Benefits Law" (C.43:21-37 et seq.), and in that case contributions shall be at the rate of 1/2 of 1%, except that commencing July 1, 1986, workers in the employ of any nongovernmental employer electing or required to make payments in lieu of contributions shall be required to make contributions to the fund at the same rate prescribed for workers of other nongovernmental employers.

(C)(i) Notwithstanding the above provisions of this paragraph (1), during the period starting July 1, 1986 and ending December 31, 1992, each worker shall contribute to the fund 1.125% of wages paid with respect to his employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under R.S.43:21-19(h)(6), regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection R.S.43:21-19(h) with respect to becoming an employer. Contributions, however, shall be at the rate of 0.625% while the worker is covered by an approved private plan under the "Temporary Disability Benefits Law" while the worker is exempt under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any other provision of that law; provided that such contributions shall be at the rate of 0.625% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions and which is covered by the State plan under the "Temporary Disability Benefits Law," except that, while the worker is exempt from the provisions of the "Temporary Disability

Benefits Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any other provision of that law, or is covered for disability benefits by an approved private plan of the employer, the contributions to the fund shall be 0.125%.

(ii) (Deleted by amendment, P.L.1995, c.422.)

(D) Notwithstanding any other provisions of this paragraph (1), during the period starting January 1, 1993 and ending June 30, 1994, each worker shall contribute to the unemployment compensation fund 0.5% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph 6 of subsection (h) of R.S.43:21-19, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of R.S.43:21-19 with respect to becoming an employer. No contributions, however, shall be made by the worker while the worker is covered by an approved private plan under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.) or while the worker is exempt under section 7 of P.L.1948, c.110 (C.43:21-31) or any other provision of that law; provided that the contributions shall be at the rate of 0.50% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions and which is covered by the State plan under the "Temporary Disability Benefits Law," except that, while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any other provision of that law, or is covered for disability benefits by an approved private plan of the employer, no contributions shall be made to the fund.

Each worker shall, starting on January 1, 1996, contribute to the unemployment compensation fund 0.60% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph 6 of subsection (h) of R.S.43:21-19, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that

employer has satisfied the conditions set forth in subsection (h) of R.S.43:21-19 with respect to becoming an employer, provided that the contributions shall be at the rate of 0.10% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

(E) Each employer shall, notwithstanding any provision of law in this State to the contrary, withhold in trust the amount of his workers' contributions from their wages at the time such wages are paid, shall show such deduction on his payroll records, shall furnish such evidence thereof to his workers as the division or controller may prescribe, and shall transmit all such contributions, in addition to his own contributions, to the office of the controller in such manner and at such times as may be prescribed. If any employer fails to deduct the contributions of any of his workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he alone shall thereafter be liable for such contributions, and for the purpose of R.S.43:21-14, such contributions shall be treated as employer's contributions required from him.

(F) As used in this chapter (R.S.43:21-1 et seq.), except when the context clearly requires otherwise, the term "contributions" shall include the contributions of workers pursuant to this section.

(G) Each worker shall, starting on July 1, 1994, contribute to the State disability benefits fund an amount equal to 0.50% of wages paid with respect to the worker's employment with a government employer electing or required to pay contributions to the State disability benefits fund or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph 6 of subsection (h) of R.S. 43:21-19, unless the employer is covered by an approved private disability plan or is exempt from the provisions of the "Temporary Disability Benefits Law," P.L.1948 c.110 (C.43:21-25 et seq.) under section 7 of that law (C.43:21-31) or any other provision of that law.

(2) (A) (Deleted by amendment, P.L.1984, c.24.)

(B) (Deleted by amendment, P.L.1984, c.24.)

(C) (Deleted by amendment, P.L.1994, c.112.)

(D) (Deleted by amendment, P.L.1994, c.112.)

(E) (i) (Deleted by amendment, P.L.1994, c.112.)

(ii) Notwithstanding any other provision of this paragraph (2), with respect to wages paid during the period beginning on January 1, 1993 and ending June 30, 1994, there shall be deposited in

and credited to the State disability benefits fund all worker contributions received by the controller.

(iii) (Deleted by amendment, P.L.1994, c.112.)

(3) If an employee receives wages from more than one employer during any calendar year, and either the sum of his contributions deposited in and credited to the State disability benefits fund (in accordance with paragraph (2) of this subsection) plus the amount of his contributions, if any, required towards the costs of benefits under one or more approved private plans under the provisions of section 9 of the "Temporary Disability Benefits Law" (C.43:21-33) and deducted from his wages, or the sum of such latter contributions, if the employee is covered during such calendar year only by two or more private plans, exceeds an amount equal to 1/2 of 1% of the "wages" determined in accordance with the provisions of R.S.43:21-7(b)(3) during the calendar years beginning on or after January 1, 1976, the employee shall be entitled to a refund of the excess if he makes a claim to the controller within two years after the end of the calendar year in which the wages are received with respect to which the refund is claimed and establishes his right to such refund. Such refund shall be made by the controller from the State disability benefits fund. No interest shall be allowed or paid with respect to any such refund. The controller shall, in accordance with prescribed regulations, determine the portion of the aggregate amount of such refunds made during any calendar year which is applicable to private plans for which deductions were made under section 9 of the "Temporary Disability Benefits Law," such determination to be based upon the ratio of the amount of such wages exempt from contributions to such fund, as provided in subparagraph (B) of paragraph (1) of this subsection with respect to coverage under private plans, to the total wages so exempt plus the amount of such wages subject to contributions to the disability benefits fund, as provided in subparagraph (B) of paragraph (2) of this subsection. The controller shall, in accordance with prescribed regulations, prorate the amount so determined among the applicable private plans in the proportion that the wages covered by each plan bear to the total private plan wages involved in such refunds, and shall assess against and recover from the employer, or the insurer if the insurer has indemnified the employer with respect thereto, the amount so prorated. The provisions of R.S.43:21-14 with respect to collection of employer contributions shall apply to such assessments. The amount so recovered by the controller shall be paid into the State disability benefits fund.

(4) If an individual does not receive any wages from the employing unit which for the purposes of this chapter (R.S.43:21-1 et seq.) is treated as his employer, or receives his wages from some other employing unit, such employer shall nevertheless be liable for such individual's contributions in the first instance; and after payment thereof such employer may deduct the amount of such contributions from any sums payable by him to such employing unit, or may recover the amount of such contributions from such employing unit, or, in the absence of such an employing unit, from such individual, in a civil action; provided proceedings therefor are instituted within three months after the date on which such contributions are payable. General rules shall be prescribed whereby such an employing unit may recover the amount of such contributions from such individuals in the same manner as if it were the employer.

(5) Every employer who has elected to become an employer subject to this chapter (R.S.43:21-1 et seq.), or to cease to be an employer subject to this chapter (R.S.43:21-1 et seq.), pursuant to the provisions of R.S.43:21-8, shall post and maintain printed notices of such election on his premises, of such design, in such numbers, and at such places as the director may determine to be necessary to give notice thereof to persons in his service.

(6) Contributions by workers, payable to the controller as herein provided, shall be exempt from garnishment, attachment, execution, or any other remedy for the collection of debts.

(e) Contributions by employers to State disability benefits fund.

(1) Except as hereinafter provided, each employer shall, in addition to the contributions required by subsections (a), (b), and (c) of this section, contribute 1/2 of 1% of the wages paid by such employer to workers with respect to employment unless he is not a covered employer as defined in section 3 of the "Temporary Disability Benefits Law" (C.43:21-27 (a)), except that the rate for the State of New Jersey shall be 1/10 of 1% for the calendar year 1980 and for the first six months of 1981. Prior to July 1, 1981 and prior to July 1 each year thereafter, the controller shall review the experience accumulated in the account of the State of New Jersey and establish a rate for the next following fiscal year which, in combination with worker contributions, will produce sufficient revenue to keep the account in balance; except that the rate so established shall not be less than 1/10 of 1%. Such contributions shall become due and be paid by the employer to the controller for the State disability benefits fund as established by law, in accordance with such regulations as may be prescribed,

and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to $0.005 or more, in which case it shall be increased to $0.01.

(2) During the continuance of coverage of a worker by an approved private plan of disability benefits under the "Temporary Disability Benefits Law," the employer shall be exempt from the contributions required by subparagraph (1) above with respect to wages paid to such worker.

(3) (A) The rates of contribution as specified in subparagraph (1) above shall be subject to modification as provided herein with respect to employer contributions due on and after July 1, 1951.

(B) A separate disability benefits account shall be maintained for each employer required to contribute to the State disability benefits fund and such account shall be credited with contributions deposited in and credited to such fund with respect to employment occurring on and after January 1, 1949. Each employer's account shall be credited with all contributions paid on or before January 31 of any calendar year on his own behalf and on behalf of individuals in his service with respect to employment occurring in preceding calendar years; provided, however, that if January 31 of any calendar year falls on a Saturday or Sunday an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him to the fund either on his own behalf or on behalf of such individuals. Benefits paid to any covered individual in accordance with Article III of the "Temporary Disability Benefits Law" on or before December 31 of any calendar year with respect to disability in such calendar year and in preceding calendar years shall be charged against the account of the employer by whom such individual was employed at the commencement of such disability or by whom he was last employed, if out of employment.

(C) The controller may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(D) Prior to July 1 of each calendar year, the controller shall make a preliminary determination of the rate of contribution for the 12 months commencing on such July 1 for each employer subject to the contribution requirements of this subsection (e).

(1) Such preliminary rate shall be 1/2 of 1% unless on the preceding January 31 of such year such employer shall have been a covered employer who has paid contributions to the State disability benefits fund with respect to employment in the three calendar years immediately preceding such year.

(2) If the minimum requirements in (1) above have been fulfilled and the credited contributions exceed the benefits charged by more than $500.00, such preliminary rate shall be as follows:

(i) 2/10 of 1% if such excess over $500.00 exceeds 1% but is less than 1 1/4% of his average annual payroll (as defined in this chapter (R.S.43:21-1 et seq.));

(ii) 15/100 of 1% if such excess over $500.00 equals or exceeds 1 1/4% but is less than 1 1/2% of his average annual payroll;

(iii) 1/10 of 1% if such excess over $500.00 equals or exceeds 1 1/2% of his average annual payroll.

(3) If the minimum requirements in (1) above have been fulfilled and the contributions credited exceed the benefits charged but by not more than $500.00 plus 1% of his average annual payroll, or if the benefits charged exceed the contributions credited but by not more than $500.00, the preliminary rate shall be 1/4 of 1%.

(4) If the minimum requirements in (1) above have been fulfilled and the benefits charged exceed the contributions credited by more than $500.00, such preliminary rate shall be as follows:

(i) 35/100 of 1% if such excess over $500.00 is less than 1/4 of 1% of his average annual payroll;

(ii) 45/100 of 1% if such excess over $500.00 equals or exceeds 1/4 of 1% but is less than 1/2 of 1% of his average annual payroll;

(iii) 55/100 of 1% if such excess over $500.00 equals or exceeds 1/2 of 1% but is less than 3/4 of 1% of his average annual payroll;

(iv) 65/100 of 1% if such excess over $500.00 equals or exceeds 3/4 of 1% but is less than 1% of his average annual payroll;

(v) 75/100 of 1% if such excess over $500.00 equals or exceeds 1% of his average annual payroll.

(5) Determination of the preliminary rate as specified in (2), (3) and (4) above shall be subject, however, to the condition that it shall in no event be decreased by more than 1/10 of 1% of wages or increased by more than 2/10 of 1% of wages from the

preliminary rate determined for the preceding year in accordance with (1), (2), (3) or (4), whichever shall have been applicable.

(E) (1) Prior to July 1 of each calendar year the controller shall determine the amount of the State disability benefits fund as of December 31 of the preceding calendar year, increased by the contributions paid thereto during January of the current calendar year with respect to employment occurring in the preceding calendar year. If such amount exceeds the net amount withdrawn from the unemployment trust fund pursuant to section 23 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-47) plus the amount at the end of such preceding calendar year of the unemployment disability account (as defined in section 22 of said law (C.43:21-46)), such excess shall be expressed as a percentage of the wages on which contributions were paid to the State disability benefits fund on or before January 31 with respect to employment in the preceding calendar year.

(2) The controller shall then make a final determination of the rates of contribution for the 12 months commencing July 1 of such year for employers whose preliminary rates are determined as provided in (D) hereof, as follows:

(i) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds 1 1/4%, the final employer rates shall be the preliminary rates determined as provided in (D) hereof, except that if the employer's preliminary rate is determined as provided in (D)(2) or (D)(3) hereof, the final employer rate shall be the preliminary employer rate decreased by such percentage of excess taken to the nearest 5/100 of 1%, but in no case shall such final rate be less than 1/10 of 1%.

(ii) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds 3/4 of 1% and is less than 1 1/4 of 1%, the final employer rates shall be the preliminary employer rates.

(iii) If the percentage determined in accordance with paragraph (E)(1) of this subsection is less than 3/4 of 1%, but in excess of 1/4 of 1%, the final employer rates shall be the preliminary employer rates determined as provided in (D) hereof increased by the difference between 3/4 of 1% and such percentage taken to the nearest 5/100 of 1%; provided, however, that no such final rate shall be more than 1/4 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, more than 1/2 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, nor more

than 3/4 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof.

(iv) If the amount of the State disability benefits fund determined as provided in paragraph (E)(1) of this subsection is equal to or less than 1/4 of 1%, then the final rate shall be 2/5 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, 7/10 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, and 1.1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof. Notwithstanding any other provision of law or any determination made by the controller with respect to any 12-month period commencing on July 1, 1970, the final rates for all employers for the period beginning January 1, 1971, shall be as set forth herein.

2. Section 4 of P.L.1992, c.43 (C.34:15D-4) is amended to read as follows:

C.34:15D-4 Workforce Development Partnership Program established.

4. a. The Workforce Development Partnership Program is hereby established in the Department of Labor and shall be administered by the Commissioner of Labor. The purpose of the program is to provide qualified displaced, disadvantaged and employed workers with the employment and training services most likely to provide the greatest opportunity for long-range career advancement with high levels of productivity and earning power. To implement that purpose, the program shall provide those services by means of training grants or customized training services, to the extent that funding for the services is not available from federal or other sources. The commissioner is authorized to expend moneys from the Workforce Development Partnership Fund to provide the training grants or customized training services and provide for each of the following:

(1) The cost of counseling required pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7), to the extent that adequate funding for counseling is not available from federal or other sources;

(2) Reasonable administrative costs not to exceed 10% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any one fiscal year, except for additional start-up administrative costs approved by the Director of the Office of Management and Budget during the first year of the program's operation;

(3) Reasonable costs, not exceeding 0.5% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any one fiscal year, as required by the State Employment and Training Commission to design criteria and conduct an annual evaluation of the program; and

(4) The cost of reimbursement to individuals for excess contributions pursuant to section 6 of P.L.1992, c.44 (C.34:15D-17).

b. Not more than 10% of the moneys received by any service provider pursuant to this act shall be expended on anything other than direct costs to the provider of providing the employment and training services, which direct costs shall not include any administrative or overhead expense of the provider.

c. Training and employment services shall be provided to a worker who receives counseling pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7) only if the counselor who evaluates the worker pursuant to that section determines that the worker can reasonably be expected to successfully complete the training and education identified in the Employability Development Plan developed pursuant to that section for the worker.

d. All vocational training provided under this act:

(1) Shall be training which is likely to substantially enhance the individual's marketable skills and earning power; and

(2) Shall be training for a labor demand occupation, except for:

(a) Customized training provided to the present employees of a business which the commissioner deems to be in need of the training to prevent job loss caused by obsolete skills, technological change or national or global competition; or

(b) Customized training provided to employees at a facility which is being relocated from another state into New Jersey; or

(c) Entrepreneurial training and technical assistance supported by training grants provided pursuant to subsection b. of section 6 of P.L.1992, c.43 (C.34:15D-6).

e. Not less than 25% of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified displaced workers. Not less than six percent of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers. Not less than 45% of the total revenues dedicated to the program during any one fiscal year shall be reserved for and appropriated to the Office of Customized Training. Not less than 3% of the total revenues dedicated to the program during any one

fiscal year shall be reserved for occupational safety and health training. Beginning July 1, 1994, 5% of the total revenues dedicated to the program during any one fiscal year shall be reserved for and appropriated to the Youth Transitions to Work Partnership created pursuant to P.L.1993, c.268 (C.34:15E-1 et seq.).

f. Funds available under the program shall not be used for activities which induce, encourage or assist: any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers; any replacement of laid off workers by trainees; or any relocation of operations resulting in a loss of employment at a previous workplace located in the State.

g. On-the-job training shall not be funded by the program for any employment found by the commissioner to be of a level of skill and complexity too low to merit training. The duration of on-the-job training funded by the program for any worker shall not exceed the duration indicated by the Specific Vocational Preparation Code developed by the United States Department of Labor for the occupation for which the training is provided and shall in no case exceed 26 weeks. The department shall set the duration of on-the-job training for a worker for less than the indicated maximum, when training for the maximum duration is not warranted because of the level of the individual's previous training, education or work experience. On-the-job training shall not be funded by the program unless it is accompanied, concurrently or otherwise, by whatever amount of classroom-based vocational training, remedial education or both, is deemed appropriate for the worker by the commissioner.

h. Employment and training services funded by the program shall not replace, supplant, compete with or duplicate in any way approved apprenticeship programs.

i. No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

3. Section 13 of P.L.1992, c.43 (C.34:15C-8.1) is amended to read as follows:

C.34:15C-8.1 State Employment and Training Commission, duties.

13. The State Employment and Training Commission shall, in a manner which complies with all provisions of this act and with the provisions of section 11 of P.L.1989, c.293 (C.34:15C-8):

a. Establish criteria and procedures for the evaluation of employment and training services funded pursuant to this act;

b. Establish criteria and procedures for the evaluation and approval of service providers pursuant to section 8 of this act; and

c. Conduct an annual evaluation of the program and make an annual report to the Governor and the Legislature regarding the effectiveness of the program in implementing the purposes of this act during the previous State fiscal year. The report shall include information regarding the effectiveness of the program and of individual service providers in enhancing the long-term productivity and earning power of trainees and in placing the trainees in permanent employment.

4. Section 2 of P.L.1992, c.44 (C.34:15D-13) is amended to read as follows:

C.34:15D-13 Employer and worker contributions.

2. Beginning on January 1, 1993, each worker shall contribute to the Workforce Development Partnership Fund an amount equal to 0.025% of the worker's wages as determined in accordance with paragraph (3) of subsection (b) of R.S.43:21-7 regarding the worker's employment with an employer.

Also beginning on January 1, 1993, each employer shall contribute to the Workforce Development Partnership Fund an amount equal to the amount that the employer's contribution to the Unemployment Compensation Fund is decreased pursuant to subparagraph (G) of paragraph (5) of subsection (c) of R.S.43:21-7.

5. Section 6 of P.L.1992, c.44 (C.34:15D-17) is amended to read as follows:

C.34:15D-17 Refund to taxpayer.

6. a. If an employee receives wages from more than one employer during any calendar year, and the sum of the employee's contributions deposited in the Workforce Development Partnership Fund exceeds an amount equal to 0.025% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of R.S.43:21-7 during the calendar year beginning January 1, 1993 or any subsequent calendar year, the employee shall be entitled to a refund of the excess if a claim establishing the employee's right to the refund is made within two

years after the end of the respective calendar year in which the wages are received and are the subject of the claim. The commissioner shall refund any overpayment from the fund without interest.

b. Any employee who is a taxpayer and entitled, pursuant to the provisions of subsection a. of this section, to a refund of contributions deducted during a tax year from his wages shall, in lieu of the refund, be entitled to a credit in the full amount thereof against the tax otherwise due on his New Jersey gross income for that tax year if he submits his claim for the credit and accompanies that claim with evidence of his right to the credit in the manner provided by regulation by the Director of the Division of Taxation. In any case in which the amount, or any portion thereof, of any credit allowed hereunder results in or increases an excess of income tax payment over income tax liability, the amount of the new or increased excess shall be considered an overpayment and shall be refunded to the taxpayer in the manner provided by subsection (a) of N.J.S.54A:9-7.

6. Section 16 of P.L.1992, c.43 is amended to read as follows:

16. This act shall take effect immediately.

7. Section 13 of P.L.1992, c.47 is amended to read as follows:

13. This act shall take effect immediately.

8. Section 9 of P.L.1993, c.268 (C.34:15C-8.3) is amended to read as follows:

C.34:15C-8.3 Annual, comprehensive evaluation.

9. The State Employment and Training Commission shall conduct an annual, comprehensive evaluation of the activities of the partnership and make an annual report to the Governor, the Legislature and the committee and the council regarding the effectiveness of the partnership in implementing the purposes of this act during the previous State fiscal year.

9. Section 13 of P.L.1993, c.268 is amended to read as follows:

13. This act shall take effect immediately.

Repealer.

10. Section 10 of P.L.1992, c.47 (C.43:21-66) is repealed.

11. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 423

AN ACT to validate certain municipal resolutions approving a tax exemption or abatement for low or moderate income senior citizen housing.

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

1. Any resolution adopted by the governing body of a municipality approving the application of an urban renewal entity to proceed with a housing project for low or moderate income senior citizens pursuant to a redevelopment plan, and authorizing a tax exemption or abatement for that project, is hereby ratified, validated and confirmed notwithstanding that the urban renewal entity failed to make written application to the municipality for approval of the project prior to proceeding with that project, as required by section 8 of P.L.1991, c.431 (C.40A:20-8).

2. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 424

AN ACT concerning judicial salaries, the judicial retirement system and the salaries of county prosecutors and workers' compensation judges and amending N.J.S.2B:2-4, N.J.S.2A:158-10, R.S.34:15-49 and P.L.1981, c.470 and repealing section 2 of P.L.1970, c.6.

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

1. N.J.S.2B:2-4 is amended to read as follows:

Judicial salaries.

2B:2-4. Judicial Salaries. Annual salaries of justices and judges shall be:

Chief Justice of the Supreme Court	$138,000
Associate Justice of the Supreme Court	132,250
Judge of the Superior Court, Appellate Division	124,200
Judge of the Superior Court, Assignment Judge	120,750
Judge of the Superior Court; Judge of the Tax Court	115,000

2. N.J.S.2A:158-10 is amended to read as follows:

Salaries of county prosecutors.

2A:158-10. County prosecutors shall receive annual salaries to be fixed by the governing body of the county at not less than $100,000.00.

3. R.S.34:15-49 is amended to read as follows:

Jurisdiction of division; salaries, qualifications, tenure of judges, etc.

34:15-49. a. The Division of Workers' Compensation shall have the exclusive original jurisdiction of all claims for workers' compensation benefits under this chapter. The judges of the Division of Workers' Compensation shall hereinafter be appointed on a bipartisan basis by the Governor, with the advice and consent of the Senate, to initial terms of three years at an annual salary, for the first year, in an amount equal to 80% of the annual salary of a Judge of the Superior Court. During the initial three-year term, each judge shall be subject to a program of evaluation developed by the Director of the Division of Workers' Compensation. Upon receipt of a satisfactory annual evaluation from the director, the annual salary of a nontenured judge shall be increased to 83 2/3% of the annual salary of a Judge of the Superior Court after one year; 86 2/3% of the annual salary of a Judge of the Superior Court after two years; and, after three years and upon tenure as provided pursuant to the provisions of this section, the annual salary of a tenured judge of compensation shall be 90% of the annual salary of a Judge of the Superior Court. Reappointment of a judge shall be by the Governor, with the advice and consent of the Senate. The director's evaluations shall be made available to the Senate Judiciary Committee if the candidate has been renominated by the Governor. Upon confirmation after the initial three-year term, a judge of the Division of Workers' Compensation shall have tenure, and shall serve during good behavior. All judges of compensation appointed prior to the effective date of

P.L.1991, c.513 shall continue to have tenure and shall continue to serve during good behavior. The annual salary of the director shall be 94% of the annual salary of a Judge of the Superior Court. The Chief Judge of Compensation shall be the Director of the Division of Workers' Compensation and may be known as the Director/Chief Judge of the division.

In addition to salary, a judge of compensation regularly assigned as an administrative supervisory judge of compensation by the director shall receive additional compensation of $2,500 per annum during the period of such assignment; and a judge of compensation regularly assigned as a supervising judge of compensation by the director shall receive additional compensation of $1,500 per annum during the period of such assignment.

Judges of compensation shall not engage in the practice of law, shall devote full time to their judicial duties, and shall have been licensed attorneys in the State of New Jersey for 10 years prior to their appointments. The director of the division shall have the same qualifications for appointment and be subject to the same restrictions as a judge of compensation.

b. An increase in an annual salary of a judge or the director under subsection a. of this section that results due to the increase in the salary of a Judge of the Superior Court provided in N.J.S.2B:2-4 as amended in section 1 of P.L.1995, c.424 (N.J.S.2B:2-4) shall not be granted until July 1, 1996.

4. Section 26 of P.L.1981, c.470 (C.43:6A-34.1) is amended to read as follows:

C.43:6A-34.1 Annuity savings fund, payroll deductions.

26. a. The annuity savings fund shall be the fund to which shall be credited aggregate contributions made by members or on their behalf to provide for their allowances. The aggregate contributions of a member withdrawn by him or paid to his estate or his designated beneficiary in the event of death as provided by this amendatory and supplementary act shall be paid from the annuity savings fund. Upon the retirement of a member where the aggregate contributions of the member are to be provided in the form of an annuity, the aggregate contributions of the member shall be transferred from the annuity savings fund to the retirement reserve fund.

b. There shall be deducted from the payroll of each member of the system 3% of the amount of any difference between the salary on or after January 19, 1982 for any judicial position held by the

member and the salary for that position on January 18, 1982, except that there shall be deducted from the payroll of each new member initially enrolled on or after January 1, 1996, in the retirement system, 3% of the salary for the judicial position held by the member.

Every judge of the several courts to whom this amendatory and supplementary act applies shall be deemed to consent and agree to any deduction from his compensation required by this act and to all other provisions of this act. Notwithstanding any other law, rule or regulation affecting the salary, pay, compensation, other perquisites, or tenure of person to whom this amendatory and supplementary act applies, or shall apply, and notwithstanding that the minimum salary, pay, or compensation or other perquisites provided by law for him shall be reduced thereby, payment, less such deductions, shall be a full and complete discharge and acquittance of all claims and demands for service rendered by him during the period covered by such payment.

Repealer.

5. Section 2 of P.L.1970, c.6 (C.2A:158-1.2) is repealed.

6. This act shall take effect immediately.

Approved January 10, 1996.

CHAPTER 425

AN ACT concerning compulsory arbitration for public fire and police departments, amending and supplementing P.L.1977, c.85, and repealing section 7 of P.L.1977, c.85.

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

C.34:13A-14a Short title.

1. This act shall be known and may be cited as the "Police and Fire Public Interest Arbitration Reform Act."

2. Section 1 of P.L.1977, c.85 (C.34:13A-14) is amended to read as follows:

C.34:13A-14 Findings, declarations relative to compulsory arbitration procedure.

1. The Legislature finds and declares:

a. Recognizing the unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State, cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission, and fully conscious of the fact that these public employees, by legal and moral precept, do not enjoy the right to strike, it is the public policy of this State that it is requisite to the high morale of such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes; and

b. It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and

c. Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved; and, therefore,

d. To that end the provisions of this reform act, providing for compulsory arbitration, shall be liberally construed.

3. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to read as follows:

C.34:13A-16 Negotiations between public fire, police department and exclusive representative; binding arbitration.

3. a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-

day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

(2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.

b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are e by means of the procedure set forth in this paragraph, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission, at a time and in a manner prescribed by the commission, as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval.

(2) Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

Within 10 days of the receipt of the notice by the non-petitioning party, the parties shall notify the commission as to whether or

not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval. If the parties fail to agree on a terminal procedure, they shall be subject to the provisions of subsection d. of this section.

c. Terminal procedures that are approvable include, but shall not be limited to the following:

(1) Conventional arbitration of all unsettled items.

(2) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, as a single package.

(3) Arbitration under which the award is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.

(4) If there is a factfinder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (a) the last offer of the employer as a single package, (b) the last offer of the employees' representative as a single package, or (c) the factfinder's recommendations as a single package.

(5) If there is a factfinder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (a) the last offer of the employer on the issue, (b) the employee representative's last offer on the issue, or (c) the factfinder's recommendation on the issue.

(6) Arbitration under which the award on the economic issues in dispute is confined to a choice between (a) the last offer of the employer on the economic issues as a single package and (b) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on that issue.

d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the commission in writing, indicating all issues in dispute

and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. Unless the parties, in a time and manner prescribed by the commission, mutually agree upon the selection of an arbitrator from the commission's special panel of arbitrators and so notify the commission in writing of that selection, the assignment of any arbitrator for the purposes of this act shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the arbitrator for assignment by lot.

In any proceeding where an arbitrator selected by mutual agreement is unable to serve, the two parties shall be afforded an opportunity to select a replacement. If the two parties are unable to mutually agree upon the selection of a replacement within a time period prescribed by the commission, the commission shall select the replacement in the manner hereinafter provided.

In any proceeding where an assigned arbitrator is unable to serve or, pursuant to the preceding paragraph, the two parties are unable to mutually agree upon a replacement, the commission shall assign a replacement arbitrator. The assignment shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the replacement arbitrator for assignment by lot.

(2) Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

The commission may suspend, remove, or otherwise discipline an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.), section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section. The commission shall promulgate rules and procedures governing the submission of the offers required under this paragraph, including when those offers shall be deemed final, binding and irreversible.

(2) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(3) Throughout formal arbitration proceedings the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

(4) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 120 days of the selection of the arbitrator by the mutual agreement of both parties or the commission's assignment of that arbitrator or panel of arbitrators, as the case may be, pursuant to paragraph (1) of subsection e. of this section; provided, however, the arbitrator or panel of arbitrators, for good cause, may petition the commission for an extension of not more than 60 days. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the commission of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this paragraph may be subject to the commission's powers under paragraph (2) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the standards set forth in

N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay.

(6) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

C.34:13A-16.1 Annual continuing education program for arbitrators.

4. The commission shall establish an annual continuing education program for the arbitrators appointed to its special panel of arbitrators. The program shall include sessions or seminars on topics and issues of relevance and importance to arbitrators serving on the commission's special panel of arbitrators, such as public employer budgeting and finance, public management and administration, employment trends and labor costs in the public sector, pertinent court decisions, employment issues relating to law enforcement officers and firefighters, and such other topics as the commission shall deem appropriate and necessary. In preparing the curriculum for the annual education program required under this section, the commission shall solicit suggestions from employees' representatives and public employers concerning the topics and issues each of those parties deem relevant and important.

Every arbitrator shall be required to participate in the commission's continuing education program. If a mediator or an arbitrator in any year fails to participate, the commission may remove that person from its special panel of arbitrators. If an arbitrator fails to participate in the continuing education program for two consecutive years, the commission shall immediately remove that individual from the special panel.

C.34:13A-16.2 Guidelines for determining comparability of jurisdictions.

5. a. The commission shall promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2) of subsection g. of section 3 of P.L.1977, c.85 (C.34:13A-16).

b. The commission shall review the guidelines promulgated under this section at least once every four years and may modify or amend them as is deemed necessary; provided, however, that the commission shall review and modify those guidelines in each year in which a federal decennial census becomes effective pursuant to R.S.52:4-1.

C.34:13A-16.3 Fee schedule; commission's costs.

6. The commission may establish a fee schedule to cover the costs of effectuating the provisions of P.L.1977, c.85 (C.34:13A-14 et seq.), as amended and supplemented; provided, however, that the fees so assessed shall not exceed the commission's actual cost of effectuating those provisions.

C.34:13A-16.4 Biennial reports.

7. The commission shall submit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local

governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in the law. The reports required under this section shall be submitted in January of even numbered years.

C.34:13A-16.5 Rules, regulations.

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

C.34:13A-16.6 Survey of private sector wage increases.

9. Beginning on the July 1 next following the enactment of P.L.1995, c.425 (C.34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

Repealer.

10. Section 7 of P.L.1977, c.85 (C.34:13A-20) is repealed.

11. This act shall take effect immediately and shall apply to all collective negotiations between public fire and police departments and the exclusive representatives of their public employers except those formal arbitration proceedings in which the arbitrator has, prior to the effective date of this act, taken testimony from the parties; provided, however, in any collective negotiation where there has occurred prior to the effective date of this act mediation, fact-finding, the selection of an arbitrator, or agreement of a terminal procedure, those actions shall remain valid and in force for the remainder of the collective negotiations, which shall be subject to the provisions of this act; and further provided, the commission may modify or waive the mandatory meeting requirement set forth in subsection a. of section 3 of P.L.1977, c.85 (C.34:13A-16) if this act takes effect less than 120 days immediately preceding the expiration of a collective negotiation agreement.

Approved January 10, 1996.

CHAPTER 426

AN ACT establishing a charter school program and supplementing Title 18A of the New Jersey Statutes.

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

C.18A:36A-1 Short title.

1. This act shall be known and may be cited as the "Charter School Program Act of 1995."

C.18A:36A-2 Findings, declarations relative to establishment of charter schools.

2. The Legislature finds and declares that the establishment of charter schools as part of this State's program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.

The Legislature further finds that the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools.

C.18A:36A-3 Charter school program established.

3. a. The Commissioner of Education shall establish a charter school program which shall provide for the approval and granting of charters to charter schools pursuant to the provisions of this act. A charter school shall be a public school operated under a charter granted by the commissioner, which is operated independently of a local board of education and is managed by a board of trustees. The board of trustees, upon receiving a charter from the commissioner, shall be deemed to be public agents authorized by the State Board of Education to supervise and control the charter school.

b. The program shall authorize the establishment of not more than 135 charter schools during the 48 months following the

effective date of this act. A minimum of three charter schools shall be allocated to each county. The commissioner shall actively encourage the establishment of charter schools in urban school districts with the participation of institutions of higher education.

C.18A:36A-4 Establishment of charter school.

4. a. A charter school may be established by teaching staff members, parents with children attending the schools of the district, or a combination of teaching staff members and parents. A charter school may also be established by an institution of higher education or a private entity located within the State in conjunction with teaching staff members and parents of children attending the schools of the district. If the charter school is established by a private entity, representatives of the private entity shall not constitute a majority of the trustees of the school, and the charter shall specify the extent to which the private entity shall be involved in the operation of the school. The name of the charter school shall not include the name or identification of the private entity, and the private entity shall not realize a net profit from its operation of a charter school. A private or parochial school shall not be eligible for charter school status.

b. A currently existing public school is eligible to become a charter school if the following criteria are met:

(1) At least 51% of the teaching staff in the school shall have signed a petition in support of the school becoming a charter school; and

(2) At least 51% of the parents or guardians of pupils attending that public school shall have signed a petition in support of the school becoming a charter school.

c. An application to establish a charter school shall be submitted to the commissioner and the local board of education or State superintendent, in the case of a State-operated school district, in the school year preceding the school year in which the charter school will be established. The board of education or State superintendent shall review the application and forward a recommendation to the commissioner within 60 days of receipt of the application. The commissioner shall have final authority to grant or reject a charter application.

d. The local board of education or a charter school applicant may appeal the decision of the commissioner to the State Board of Education. The State board shall render a decision within 30 days of the date of the receipt of the appeal. If the State board

does not render a decision within 30 days, the decision of the commissioner shall be deemed final.

e. A charter school established during the 48 months following the effective date of this act, other than a currently existing public school which becomes a charter school pursuant to the provisions of subsection b. of section 4 of this act, shall not have an enrollment in excess of 500 students or greater than 25% of the student body of the school district in which the charter school is established, whichever is less.

C.18A:36A-5 Application for charter school.

5. The application for a charter school shall include the following information:

a. The identification of the charter applicant;

b. The name of the proposed charter school;

c. The proposed governance structure of the charter school including a list of the proposed members of the board of trustees of the charter school or a description of the qualifications and method for the appointment or election of members of the board of trustees;

d. The educational goals of the charter school, the curriculum to be offered, and the methods of assessing whether students are meeting educational goals. Charter school students shall be required to meet the same testing and academic performance standards as established by law and regulation for public school students. Charter school students shall also meet any additional assessment indicators which are included within the charter approved by the commissioner;

e. The admission policy and criteria for evaluating the admission of students which shall comply with the requirements of section 8 of this act;

f. The age or grade range of students to be enrolled;

g. The school calendar and school day schedule;

h. A description of the charter school staff responsibilities and the proposed qualifications of teaching staff;

i. A description of the procedures to be implemented to ensure significant parental involvement in the operation of the school;

j. A description of, and address for, the physical facility in which the charter school will be located;

k. Information on the manner in which community groups will be involved in the charter school planning process;

l. The financial plan for the charter school and the provisions which will be made for auditing the school pursuant to the provisions of N.J.S.18A:23-1;

m. A description of and justification for any waivers of regulations which the charter school will request; and

n. Such other information as the commissioner may require.

C.18A:36A-6 Powers of charter school.

6. A charter school established pursuant to the provisions of this act shall be a body corporate and politic with all powers necessary or desirable for carrying out its charter program, including, but not limited to, the power to:

a. Adopt a name and corporate seal; however, any name selected shall include the words "charter school;"

b. Sue and be sued, but only to the same extent and upon the same conditions that a public entity can be sued;

c. Acquire real property from public or private sources, by purchase, lease, lease with an option to purchase, or by gift, for use as a school facility;

d. Receive and disburse funds for school purposes;

e. Make contracts and leases for the procurement of services, equipment and supplies;

f. Incur temporary debts in anticipation of the receipt of funds;

g. Solicit and accept any gifts or grants for school purposes; and

h. Have such other powers as are necessary to fulfill its charter and which are not inconsistent with this act or the requirements of the commissioner.

The board of trustees of a charter school shall comply with the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

C.18A:36A-7 Student admissions to charter school.

7. A charter school shall be open to all students on a space available basis and shall not discriminate in its admission policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, proficiency in the English language, or any other basis that would be illegal if used by a school district; however, a charter school may limit admission to a particular grade level or to areas of concentration of the school, such as mathematics, science, or the arts. A charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school's charter.

C.18A:36A-8 Enrollment preference.

8. a. Preference for enrollment in a charter school shall be given to students who reside in the school district in which the charter school is located. If there are more applications to enroll

in the charter school than there are spaces available, the charter school shall select students to attend using a random selection process. A charter school shall not charge tuition to students who reside in the district.

b. A charter school shall allow any student who was enrolled in the school in the immediately preceding school year to enroll in the charter school in the appropriate grade unless the appropriate grade is not offered at the charter school.

c. A charter school may give enrollment priority to a sibling of a student enrolled in the charter school.

d. If available space permits, a charter school may enroll non-resident students. The terms and condition of the enrollment shall be outlined in the school's charter and approved by the commissioner.

e. The admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community's school age population including racial and academic factors.

C.18A:36A-9 Withdrawal, expulsion from charter school.

9. A student may withdraw from a charter school at any time. A student may be expelled from a charter school based on criteria determined by the board of trustees, which are consistent with the provisions of N.J.S.18A:37-2, and approved by the commissioner as part of the school's charter. Any expulsion shall be made upon the recommendation of the charter school principal, in consultation with the student's teachers.

C.18A:36A-10 Location of charter school.

10. A charter school may be located in part of an existing public school building, in space provided on a public work site, in a public building, or any other suitable location. The facility shall be exempt from public school facility regulations except those pertaining to the health or safety of the pupils. A charter school shall not construct a facility with public funds.

C.18A:36A-11 Operation of charter school.

11. a. A charter school shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools; except that, upon the request of the board of trustees of a charter school, the commissioner may exempt the school from State regulations concerning public schools, except those pertaining to assessment, testing, civil rights and student health and safety, if the board of trustees satisfactorily demon-

strates to the commissioner that the exemption will advance the educational goals and objectives of the school.

b. A charter school shall comply with the provisions of chapter 46 of Title 18A of the New Jersey Statutes concerning the provision of services to handicapped students; except that the fiscal responsibility for any student currently enrolled in or determined to require a private day or residential school shall remain with the district of residence.

c. A charter school shall comply with applicable State and federal anti-discrimination statutes.

C.18A:36A-12 Per pupil payments to charter school.

12. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district a presumptive amount equal to 90% of the local levy budget per pupil for the specific grade level in the district. At the discretion of the commissioner and at the time the charter is granted, the commissioner may require the school district of residence to pay directly to the charter school for each student enrolled in the charter school an amount equal to less than 90% percent, or an amount which shall not exceed 100% of the local levy budget per pupil for the specific grade level in the district of residence. The per pupil amount paid to the charter school shall not exceed the local levy budget per pupil for the specific grade level in the district in which the charter school is located. The district of residence shall also pay directly to the charter school any categorical aid attributable to the student, provided the student is receiving appropriate categorical services, and any federal funds attributable to the student.

C.18A:36A-13 Transportation for students.

13. The students who reside in the school district in which the charter school is located shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Nonresident students shall receive transportation services pursuant to regulations established by the State board.

C.18A:36A-14 Authority of board of trustees; employees.

14. a. The board of trustees of a charter school shall have the authority to decide matters related to the operations of the school including budgeting, curriculum, and operating procedures, subject to the school's charter. The board shall provide for appropriate insurance against any loss or damage to its property

or any liability resulting from the use of its property or from the acts or omissions of its officers and employees.

b. In the case of a currently existing public school which becomes a charter school pursuant to the provisions of subsection b. of section 4 of this act, all school employees of the charter school shall be deemed to be members of the bargaining unit defined in the applicable agreement and shall be represented by the same majority representative organization as the employees covered by that agreement. In the case of other charter schools, the board of trustees of a charter school shall have the authority to employ, discharge and contract with necessary teachers and nonlicensed employees subject to the school's charter. The board of trustees may choose whether or not to offer the terms of any collective bargaining agreement already established by the school district for its employees, but the board shall adopt any health and safety provisions of the agreement. The charter school and its employees shall be subject to the provisions of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.). A charter school shall not set a teacher salary lower than the minimum teacher salary specified pursuant to section 7 of P.L.1985, c.321 (C.18A:29-5.6) nor higher than the highest step in the salary guide in the collective bargaining agreement which is in effect in the district in which the charter school is located.

c. All classroom teachers and professional support staff shall hold appropriate New Jersey certification. The commissioner shall make appropriate adjustments in the alternate route program in order to expedite the certification of persons who are qualified by education and experience.

d. A public school employee, tenured or non-tenured, may request a leave of absence of up to three years from the local board of education or State district superintendent in order to work in a charter school. Approval for a leave of absence shall not be unreasonably withheld. Employees on a leave of absence as provided herein shall remain in, and continue to make contributions to, their retirement plan during the time of the leave and shall be enrolled in the health benefits plan of the district in which the charter school is located. The charter school shall make any required employer's contribution to the district's health benefits plan.

e. Public school employees on a leave shall not accrue tenure in the public school system but shall retain tenure, if so applicable, and shall continue to accrue seniority, if so applicable, in the public school system if they return to their non-charter school

when the leave ends. An employee of a charter school shall not accrue tenure pursuant to N.J.S.18A:17-2, N.J.S.18A:17-3, or N.J.S.18A:28-5, but shall acquire streamline tenure pursuant to guidelines promulgated by the commissioner, and the charter shall specify the security and protection to be afforded to the employee in accordance with the guidelines.

f. Any public school employee who leaves or is dismissed from employment at a charter school within three years shall have the right to return to the employee's former position in the public school district which granted the leave of absence, provided the employee is otherwise eligible for employment in the public school.

C.18A:36A-15 Complaints to board of trustees.

15. Any individual or group may bring a complaint to the board of trustees of a charter school alleging a violation of the provisions of this act. If, after presenting the complaint to the board of trustees, the individual or group determines that the board of trustees has not adequately addressed the complaint, they may present that complaint to the commissioner who shall investigate and respond to the complaint. The board shall establish an advisory grievance committee consisting of both parents and teachers who are selected by the parents and teachers of the school to make nonbinding recommendations to the board concerning the disposition of a complaint.

C.18A:36A-16 Annual assessment, review of charter schools.

16. a. The commissioner shall annually assess whether each charter school is meeting the goals of its charter, and shall conduct a comprehensive review prior to granting a renewal of the charter. The county superintendent of schools of the county in which the charter school is located shall have on-going access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and that State board regulations concerning assessment, testing, civil rights, and student health and safety are being met.

b. In order to facilitate the commissioner's review, each charter school shall submit an annual report to the local board of education, the county superintendent of schools, and the commissioner in the form prescribed by the commissioner. The report shall be received annually by the local board, the county superintendent, and the commissioner no later than August 1.

The report shall also be made available to the parent or guardian of a student enrolled in the charter school.

c. Six years following the effective date of this act, the commissioner shall hold public hearings in the north, central, and southern regions of the State to receive input from members of the educational community and the public on the charter school program. The commissioner shall submit to the Governor and the Legislature a report on and an evaluation of the charter school program which shall include a recommendation on the advisability of the continuation, modification, expansion, or termination of the program and any recommendations for changes in the structure of the program which the commissioner deems advisable.

C.18A:36A-17 Granting, renewal of charter.

17. A charter granted by the commissioner pursuant to the provisions of this act shall be granted for a four-year period and may be renewed for a five-year period. The commissioner may revoke a school's charter if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter. The commissioner may place the charter school on probationary status to allow the implementation of a remedial plan after which, if the plan is unsuccessful, the charter may be summarily revoked. The commissioner shall develop procedures and guidelines for the revocation and renewal of a school's charter.

C.18A:36A-18 Rules, regulations.

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

19. This act shall take effect immediately.

Approved January 11, 1996.

JOINT RESOLUTIONS

Joint Resolutions

JOINT RESOLUTION No. 1

A JOINT RESOLUTION designating United States Route 202 overpass bridge at the Somerville Circle in Somerset County as the John Basilone Memorial Bridge.

WHEREAS, John Basilone was born in Raritan, New Jersey, in 1916, the son of an Italian immigrant and a member of a family of nine children; and

WHEREAS, John "Johnny" Basilone attended St. Bernard's Parochial School in Raritan and in 1934 enlisted in the United States Army after graduating from grammar school; and

WHEREAS, In 1940 Mr. Basilone re-enlisted in the armed forces, this time choosing the United States Marine Corps, and became a member of the First Marine Division, First Battalion, Seventh Regiment; and

WHEREAS, The First Marine Division was selected to invade the island of Guadalcanal, which invasion occurred on August 7, 1942, and overcame Japanese resistance; and

WHEREAS, Then Gunnery Sergeant Basilone commanded the machine gun forces which withstood the Japanese counter-offensive following the U.S. landing on Guadalcanal, which began Saturday night, October 24, 1942 and continued non-stop for 72 hours, until early Tuesday morning; and

WHEREAS, The extraordinary bravery and tenacity shown by about 800 American troops, who in that weekend defeated an estimated 15,000 Japanese soldiers, changed the course of World War II; and

WHEREAS, Sergeant Basilone was awarded the Congressional Medal of Honor for his "great personal valor and courageous initiative" on the island of Guadalcanal, the first Medal of Honor awarded to an enlisted Marine in World War II; and

WHEREAS, After his action in Guadalcanal, Sergeant Basilone turned down a commission and returned to the front lines, where he was killed on February 19, 1945, in the first wave of attack on Iwo Jima, but not before he had guided a trapped tank away from a mine field and singlehandedly knocked out a blockhouse, an act that earned him a Navy Cross, awarded posthumously at the age of 28; and

WHEREAS, It is most fitting and proper for this son of New Jersey to be remembered for his bravery and heroism by the designation of the recently constructed Somerville overpass bridge in his memory; 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 United States Highway Route 202 bridge overpass, at the intersection of United States Highway Route 206 and New Jersey State Highway Route 28 at the Somerville Circle in the Borough of Somerville in Somerset County, as the "John Basilone Memorial Bridge."

2. The Commissioner of Transportation is authorized to place an appropriate plaque on the bridge bearing that name.

3. This joint resolution shall take effect immediately.

Approved February 15, 1995.

JOINT RESOLUTION No. 2

A JOINT RESOLUTION designating the month of April 1995 as "New Eyes for the Needy Month."

WHEREAS, For 60 years, the organization New Eyes for the Needy has been offering the gift of sight through the recycling of donated eyeglasses to those who cannot afford standard eye care; and

WHEREAS, New Eyes for the Needy was born during the Depression when Julia Lawrence Terry, a volunteer for the Red Cross in New York City, noticed that many of the recipients of the Red Cross' charity were unable to see and called upon her friends to donate their old eyeglasses; and

WHEREAS, In 1947, New Eyes for the Needy became a project of the Junior Service League of Short Hills whose members expanded the operation to include collecting jewelry and old hearing aids and supplying recycled eyeglasses worldwide at no charge; and

WHEREAS, The organization has also expanded its scope to include the recovery of precious metals contained in eyeglass frames, using the proceeds to pay for new optical prescriptions for the needy; now, therefore,

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

1. The month of April 1995 shall be designated "New Eyes for the Needy Month" in the State of New Jersey.

2. The Governor shall issue a proclamation calling upon public officials and the citizens of this State to observe the month with appropriate activities and programs.

3. This joint resolution shall take effect immediately.

Approved April 11, 1995.

JOINT RESOLUTION No. 3

A JOINT RESOLUTION designating Interstate Highway Route 287 as the Korean War Memorial Highway, except that when Route 287 passes through Bergen County it shall be designated as the Korean War Memorial Highway/Walter Bray, Ex POW, Army; through Passaic County, the Korean War Memorial Highway/ Clarence "Red" Mosley, U.S.A.F.; and through Morris County, the Korean War Memorial Highway/Hector A. Cafferata, Jr., U.S. Marines, Congressional Medal of Honor Recipient.

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, After the end of the Korean War American troops remained stationed in the demilitarized zone for 36 years until October 4, 1991, during which time 90 were killed in action, 134 were wounded in action and at one point fighting was so severe that Pvt. Edward C. Reynolds was recommended for the Congressional Medal of Honor; and even today American troops are stationed in Korea; and

WHEREAS, Walter Bray, born and raised a resident of Bergen County, was one of the first Americans to fight in Korea, with the 24th Infantry, was decorated with the bronze star for bravery and also earned the Combat Infantryman's Badge and two Purple Hearts; and

WHEREAS, Walter Bray spent 33 of 37 months of the Korean War as a prisoner of war, captured after a fierce battle in which he was wounded and then forced to march in bitter sub zero weather despite serious injury to his right ankle, and for the first 18 months of captivity he could not walk or stand and received no medical attention; and

WHEREAS, After the war Walter Bray returned to New Jersey, reclaimed his life and has continued to provide meritorious service to his community by serving with veterans' organizations and helping to institute and develop the first Korean War Monument in Bergen County; and

WHEREAS, Clarence "Red" Mosley-U.S.A.F., a native of Paterson, was injured during a bombing mission over North Korea, becoming the first U.S. Air Force quadriplegic of the Korean War, and was awarded the Air Medal and the Distinguished Flying Cross; and

WHEREAS, Clarence "Red" Mosley's recuperation was miraculous and has been an inspiration to those who have met him as he has led a productive and active life, giving of himself to veterans organizations and the Diamond Gloves Boxing Tournaments; and

WHEREAS, Clarence "Red" Mosley not only is an example of courage, fortitude and inspiration to his loved ones and friends but stands as an ideal of perseverance for veterans and Americans of all ages; and

WHEREAS, Hector Cafferata, Jr., entering the service in Dover for basic training with the Marines, was cited for conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty, while serving as a rifleman in action against enemy forces; and

WHEREAS, Hector Cafferata, Jr., by his fortitude, great personal valor, and dauntless perseverance in the face of almost certain death, saved the lives of several of his fellow Marines and contributed essentially to the success achieved by his company in maintaining its defensive position against tremendous odds; and

WHEREAS, Hector Cafferata, Jr. is a Congressional Medal of Honor recipient, involved with both civic and veterans functions over the past 40 years; and

WHEREAS, As it is altogether fitting and proper to recognize those who served in the Korean War, and in particular to recognize the remarkable service of Walter Bray, Clarence "Red" Mosley and Hector Cafferata, Jr. both during and after the Korean War, by naming Interstate Highway Route 287 as the Korean War Memorial Highway with additional individualized designations for these men as the route passes through their home counties; now, therefore,

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

1. Interstate Highway Route 287 is designated as the Korean War Memorial Highway, except that when Route 287 passes through Bergen County it shall be designated as the Korean War Memorial Highway/Walter Bray, Ex POW, Army; through Pas-

saic County, the Korean War Memorial Highway/Clarence "Red" Mosley, U.S.A.F.; and through Morris County, the Korean War Memorial Highway/Hector A. Cafferata, Jr., U.S. Marines, Congressional Medal of Honor Recipient.

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing those names.

3. This joint resolution shall take effect immediately.

Approved April 11, 1995.

JOINT RESOLUTION No. 4

A JOINT RESOLUTION permanently establishing the last Thursday in April as "Take our Daughters to Work Day."

WHEREAS, On April 28, 1993, nearly one million girls, age nine through 15, and their parents made history by participating in the first annual "Take our Daughters to Work Day"; and

WHEREAS, Sponsored by the Ms. Foundation for Women, the idea of taking daughters to work was born out of the foundation's desire to bring to the attention of the American public, the systematic inequities that research indicates are negatively affecting the way young girls view themselves and their self-worth; and

WHEREAS, Young girls have lower expectations for their futures than boys; watching women in the workplace and witnessing their contributions to American society and the economy can help young girls realize that they have a range of life options which are not limited to low-wage jobs or the traditional role of housewife; and

WHEREAS, It is the hope of the Ms. Foundation for Women and the New Jersey chapter of the National Organization of Women that "Take our Daughters to Work Day" will help even more young girls in New Jersey, as well as throughout the nation, experience the realities of the workplace, discover their true abilities and think realistically about the future; now, therefore,

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

C.36:2-35 "Take our Daughters to Work Day" designated.

1. The last Thursday in April shall be permanently established as "Take our Daughters to Work Day."

2. The Governor shall be requested to issue a proclamation calling upon public officials and citizens of this State to observe the day with appropriate activities and programs.

3. This joint resolution shall take effect immediately.

Approved May 19, 1995.

JOINT RESOLUTION No. 5

A JOINT RESOLUTION designating the month of June in each year as "Prostate Cancer Awareness Month."

WHEREAS, Prostate cancer is the most common type of cancer and the second leading cause of cancer-related death among men; and

WHEREAS, According to data supplied by the American Cancer Society, there were an estimated 200,000 new cases of prostate cancer nationally in 1994, and there were an estimated 38,000 deaths from prostate cancer in 1994; and

WHEREAS, Of the 42,000 estimated new cases of cancer in New Jersey in 1994, 6,800 involved cancer of the prostate, and there were an estimated 1,300 deaths from prostate cancer in New Jersey, which ranked the State among the top 10 nationally in both categories; and

WHEREAS, Nationally, the number of deaths from prostate cancer has more than doubled over a 30-year period, from 14,452 in 1960 to 32,378 in 1990; and the prostate cancer death rate per 100,000 population rose by 23% over a comparable period; and

WHEREAS, Improvements in cancer screening and early diagnosis have contributed heavily to the increase in the number of prostate cancer cases that are diagnosed; and the five-year relative survival rate for prostate cancer patients whose tumors are discovered while still localized is 92%; and

WHEREAS, The importance of early detection in the survival of prostate cancer patients highlights the need for widespread awareness of the signs and symptoms of the disease and reinforces the rationale for increased efforts to educate the public about prostate cancer; and

WHEREAS, The recent passing of Congressman Dean A. Gallo from prostate cancer has heightened awareness of this disease throughout the State and suggests the need for a formal annual recognition of this growing threat to the public health, which would serve as a fitting tribute to the memory of Congressman Gallo and all New Jerseyans who have died from prostate cancer; and

WHEREAS, The Department of Health is developing a prostate cancer public information initiative in cooperation with the Medical Society of New Jersey, the New Jersey Division of the American Cancer Society, the Cancer Institute of New Jersey and the New Jersey State Commission on Cancer Research; now, therefore,

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

C.36:2-36 "Prostate Cancer Awareness Month" designated.

1. The month of June in each year is designated as "Prostate Cancer Awareness Month" in the State of New Jersey, and the citizens of New Jersey are urged to observe the month with appropriate activities and programs.

2. This joint resolution shall take effect immediately.

Approved June 15, 1995.

JOINT RESOLUTION No. 6

A JOINT RESOLUTION directing the New Jersey Turnpike Authority to designate the Newark Bay/Hudson County Extension Bridge as the "Vincent Robert Casciano Bridge."

WHEREAS, The Honorable Vincent Robert Casciano is a well-beloved person with a long and distinguished career in industry and government in New Jersey; and

WHEREAS, Mr. Casciano served as President of the Bayonne Council of the C.I.O., representing 5,000 workers, and as Chairman of the Federal Credit Union of Electro Dynamic Company, and in which capacity he handled more than $100,000 in workers' funds; and

WHEREAS, During World War II, Mr. Casciano served as Chairman of the Industrial Workers Salvage Committee, organized by the Federal Government to secure salvaged metals for return to mill for war use and was awarded a certificate for his service; and

WHEREAS, Mr. Casciano served as Federal Government Co-ordinator for the Office of Price Administration in Bayonne from 1942 to 1946 and was responsible for assuring consumers fair prices and a fair distribution of needed goods when the nation was in a period of rationing, and received a citation from President Harry S. Truman for his loyalty and devotion to this work during a period of great national danger; and

WHEREAS, Mr. Casciano served with distinction on the staff of the Hudson County Board of Health after World War II; and

WHEREAS, Mr. Casciano was elected to the General Assembly of this State for the first time in 1949, and re-elected in 1951; and

WHEREAS, Assemblyman Casciano, in his capacity as a member of the Assembly Highway Committee, took an active role in convincing the New Jersey Turnpike Authority of the need for an extension of the Turnpike from Newark crossing Newark Bay and passing through Hudson County to the Holland Tunnel, and led the effort in the passage of Senate

Bill, No. 311, authorizing the New Jersey Turnpike Authority to construct this extension which includes the "Newark Bay/Hudson County Extension Bridge"; and

WHEREAS, Assemblyman Casciano was also influential in persuading the State Highway Department to undertake several transportation projects in the Hudson County area to enhance the proper flow of traffic; and

WHEREAS, Assemblyman Casciano has, since 1954, dutifully served in the Office of the Hudson County Administrator; and

WHEREAS, Assemblyman Casciano has taken an active role in a wide range of civic and charitable programs in the Hudson County area, including service with the Bayonne Chapter of the American Red Cross, the St. Joseph's Home for the Blind in Jersey City, and the Bayonne Chamber of Commerce; and

WHEREAS, It is most fitting and proper that the Newark Bay/Hudson County Extension Bridge be designated in honor of the Honorable Vincent Robert Casciano and in recognition of his efforts to have the New Jersey Turnpike Authority construct the bridge and for his life of devoted public service to the city of Bayonne, the county of Hudson, and the people of this State; now, therefore,

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

1. The New Jersey Turnpike Authority shall designate the Newark Bay/Hudson County Extension Bridge as the "Vincent Robert Casciano Bridge."

2. The New Jersey Turnpike Authority is authorized to erect appropriate signs bearing this name.

3. This joint resolution shall take effect immediately.

Approved August 14, 1995.

JOINT RESOLUTION No. 7

A JOINT RESOLUTION designating State Highway Route No. 94 as the "World War II 94th Infantry Division Memorial Highway."

WHEREAS, During the course of World War II, approximately four thousand men from the State of New Jersey were members of the 94th Infantry Division, comprising the 94th's second largest state contingent; and

WHEREAS, Members of the 94th bravely served this country in four victorious campaigns in the European Theatre during World War II, serving the majority of their tour under the command of then Lt. General George Patton; and

WHEREAS, During these four campaigns the 94th secured the submarine ports of Lorient and St. Nazaire, Brittany, France by containing 680 square miles of German-dominated terrain; captured the City of Trier, Luxembourg and the Saar-Moselle Triangle, which Hitler thought to be impregnable; and seized the industrial city of Ludwighaven, becoming the first division of the Third Army to reach the Rhine, before moving on to Dusseldorf and eventually to Czechoslovakia, where its units remained in occupation until returning to the United States; and

WHEREAS, One soldier from the 94th, then Technical Sergeant Nick Oresko of Tenafly, New Jersey was awarded the "Medal of Honor" by President Truman for the indomitable courage he displayed on January 23, 1945, when he singlehandedly attacked two machine-gun bunkers, while wounded, killing twelve Germans and enabling his company to complete its mission with minimum casualties; and

WHEREAS, The 94th Infantry Division has been much decorated, becoming the first Expert Division of the United States Army and earning four Battle Stars, in addition to its individual units and members receiving numerous other commendations; and

WHEREAS, It is altogether fitting and proper that the Legislature take action to honor the meritorious service of the brave and patriotic citizens of New Jersey who served with the 94th Infantry Division, whose insignia 9/4 continues to serve the United States, by dedicating State Highway Route No. 94 in their honor; now, therefore,

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

1. For the purposes cited in the preamble hereto, the Commissioner of Transportation shall designate State Highway Route No. 94 as the "World War II 94th Infantry Division Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing this name.

3. This joint resolution shall take effect immediately.

Approved August 15, 1995.

AMENDMENTS ADOPTED IN 1995 TO THE 1947 CONSTITUTION

Amendments Adopted in 1995 to the 1947 Constitution

ARTICLE II

Amend Article II to read as follows:

Article II

ELECTIONS AND SUFFRAGE

SECTION I

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

2. All questions submitted to the people of the entire State shall be voted upon at the general election next occurring at least 70 days following the final action of the Governor or the Legislature, as appropriate, necessary to submit the questions. The text of any such question shall be published at least once in one or more newspapers of each county, if any newspapers be published therein, at least 60 days before the election at which it is to be submitted to the people, and the results of the vote upon a question shall be void unless the text thereof shall have been so published.

3. (a) Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people; and

(b) (Deleted by amendment, effective December 5, 1974.)

(c) Any person registered as a voter in any election district of this State who has removed or shall remove to another state or to

another county within this State and is not able there to qualify to vote by reason of an insufficient period of residence in such state or county, shall, as a citizen of the United States, have the right to vote for electors for President and Vice President of the United States, only, by Presidential Elector Absentee Ballot, in the county from which he has removed, in such manner as the Legislature shall provide.

4. In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of suffrage.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

SECTION II

1. (a) After each federal census taken in a year ending in zero, the Congressional districts shall be established by the New Jersey Redistricting Commission.

The commission shall consist of 13 members, none of whom shall be a member or employee of the Congress of the United States. The members of the commission shall be appointed with due consideration to geographic, ethnic and racial diversity and in the manner provided herein.

(b) There shall first be appointed 12 members as follows:

(1) two members to be appointed by the President of the Senate;

(2) two members to be appointed by the Speaker of the General Assembly;

(3) two members to be appointed by the minority leader of the Senate;

(4) two members to be appointed by the minority leader of the General Assembly; and

(5) four members, two to be appointed by the chairman of the State committee of the political party whose candidate for the office of Governor received the largest number of votes at the most recent gubernatorial election and two to be appointed by the chairman of the State committee of the political party whose candidate for the office of Governor received the next largest number of votes in that election.

Appointments to the commission under this subparagraph shall be made on or before June 15 of each year ending in one and shall be certified by the respective appointing officials to the Secretary of State on or before July 1 of that year.

Each partisan delegation so appointed shall appoint one of its members as its chairman who shall have authority to make such certifications and to perform such other tasks as the members of that delegation shall reasonably require.

(c) There shall then be appointed one member, to serve as an independent member, who shall have been for the preceding five years a resident of this State, but who shall not during that period have held public or party office in this State.

The independent member shall be appointed upon the vote of at least seven of the previously appointed members of the commission on or before July 15 of each year ending in one, and those members shall certify that appointment to the Secretary of State on or before July 20 of that year. If the previously appointed members are unable to appoint an independent member within the time allowed therefor, they shall so certify to the Supreme Court not later than that July 20 and shall include in that certification the names of the two persons who, in the members' final vote upon the appointment of the independent member, received the greatest number of votes. Not later than August 10 following receipt of that certification, the Supreme Court shall by majority vote of its full authorized membership select, of the two persons so named, the one more qualified by education and occupational experience, by prior public service in government or otherwise, and by demonstrated ability to represent the best interest of the people of this State, to be the independent member. The Court shall certify that selection to the Secretary of State not later than the following August 15.

(d) Vacancies in the membership of the commission occurring prior to the certification by the commission of Congressional districts or during any period in which the districts established by the commission may be or are under challenge in court shall be filled in the same manner as the original appointments were made within five days of their occurrence. In the case of a vacancy in the membership of the independent member, if the other members of the commission are unable to fill that vacancy within that five-day period, they shall transmit certification of such inability within three days of the expiration of the period to the Supreme Court, which shall select the person to fill the vacancy within five days of receipt of that certification.

2. The independent member shall serve as the chairman of the commission. The commission shall meet to organize as soon as may be practicable after certification of the appointment of the independent member, but not later than the Wednesday after the first Monday in September of each year ending in one. At the organizational meeting the members of the commission shall determine such organizational matters as they deem appropriate. Thereafter, a meeting of the commission may be called by the chairman or upon the request of seven members, and seven members of the commission shall constitute a quorum at any meeting thereof for the purpose of taking any action.

3. On or before the third Tuesday of each year ending in two, or within three months after receipt in each decade by the appropriate State officer of the official statement by the Clerk of the United States House of Representatives, issued pursuant to federal law, regarding the number of members of the House of Representatives apportioned to this State for that decade, whichever is later, the commission shall certify the establishment of the Congressional districts to the Secretary of State. The commission shall certify the establishment of districts pursuant to a majority vote of the full authorized membership of the commission convened in open public meeting, of which meeting there shall be at least 24 hours' public notice. Any vote by the commission upon a proposal to certify the establishment of a Congressional district plan shall be taken by roll call and shall be recorded, and the vote of any member in favor of any Congressional district plan shall nullify any vote which that member shall previously have cast during the life of the commission in favor of a different Congressional district plan. If the commission is unable to certify the

establishment of districts by the time required due to the inability of a plan to achieve seven votes, the two district plans receiving the greatest number of votes, but not fewer than five votes, shall be submitted to the Supreme Court, which shall select and certify whichever of the two plans so submitted conforms most closely to the requirements of the Constitution and laws of the United States.

4. The New Jersey Redistricting Commission shall hold at least three public hearings in different parts of the State. The commission shall, subject to the constraints of time and convenience, review written plans for the establishment of Congressional districts submitted by members of the public.

5. Meetings of the New Jersey Redistricting Commission shall be held at convenient times and locations and, with the exception of the public hearings required by paragraph 4 of this section and the meeting at which the establishment of districts is certified as prescribed by paragraph 3 of this section, may be closed to the public.

6. The Legislature shall appropriate the funds necessary for the efficient operation of the New Jersey Redistricting Commission.

7. Notwithstanding any provision to the contrary of this Constitution and except as otherwise required by the Constitution or laws of the United States, no court of this State other than the Supreme Court shall have jurisdiction over any judicial proceeding challenging the appointment of members to the New Jersey Redistricting Commission, or any action, including the establishment of Congressional districts, by the commission or other public officer or body under the provisions of this section.

8. The establishment of Congressional districts shall be used thereafter for the election of members of the House of Representatives and shall remain unaltered through the next year ending in zero in which a federal census for this State is taken.

9. If a plan certified by the commission is declared unlawful, the commission shall reorganize and adopt another Congressional district plan in the same manner as herein required and within the period of time prescribed by the court or within such shorter period as may be necessary to ensure that the new plan is effec-

tive for the next succeeding primary and general election for all members of the United States House of Representatives.

Adopted November 7, 1995.
Effective December 7, 1995.

ARTICLE VIII, SECTION II, PARAGRAPH 4

Amend Article VIII, Section II, paragraph 4, as follows:

4. There shall be credited to a special account in the General Fund for the State fiscal year in which the amendment to this paragraph is approved by the voters an amount equivalent to the revenue derived from $0.025 per gallon from the tax imposed on the sale of motor fuels pursuant to chapter 39 of Title 54 of the Revised Statutes, and an amount equivalent to the revenue derived from $0.07 per gallon from the tax shall be credited to the account in each of the first two State fiscal years commencing after the approval of the amendment to this paragraph by the voters, and an amount equivalent to the revenue derived from $0.08 per gallon from the tax shall be credited to the account in the third State fiscal year commencing after the approval of the amendment to this paragraph by the voters, and an amount equivalent to the revenue derived from $0.09 per gallon from the tax shall be credited to the account in the fourth State fiscal year commencing after the approval of the amendment to this paragraph by the voters and annually thereafter; provided, however, the dedication and use of such revenues as provided in this paragraph shall be subject and subordinate to (a) all appropriations of revenues from such taxes made by laws enacted on or before December 6, 1984 in accordance with Article VIII, Section II, paragraph 3 of the State Constitution in order to provide the ways and means to pay the principal and interest on bonds of the State presently outstanding or authorized to be issued under such laws or (b) any other use of those revenues enacted into law on or before December 6, 1984. These amounts shall be appropriated from time to time by the Legislature, only for the purposes of paying or financing the cost of planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of the transportation system in this State and it shall not be competent for the

Legislature to borrow, appropriate or use these amounts or any part thereof for any other purpose, under any pretense whatever.

Adopted November 7, 1995.
Effective December 7, 1995.

ARTICLE VIII, SECTION II

Amend Article VIII, Section II of the Constitution by the addition of the following paragraph:

5. (a) With respect to any provision of a law enacted on and after January 17, 1996, and with respect to any rule or regulation issued pursuant to a law originally adopted after July 1, 1996, and except as otherwise provided herein, any provision of such law, or of such rule or regulation issued pursuant to a law, which is determined in accordance with this paragraph to be an unfunded mandate upon boards of education, counties, or municipalities because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation, shall, upon such determination cease to be mandatory in its effect and expire. A law or rule or regulation issued pursuant to a law that is determined to be an unfunded mandate shall not be considered to establish a standard of care for the purpose of civil liability.

(b) The Legislature shall create by law a Council on Local Mandates. The Council shall resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate. The Council shall consist of nine public members appointed as follows: four members to be appointed by the Governor; one member to be appointed by the President of the Senate; one member to be appointed by the Speaker of the General Assembly; one member to be appointed by the minority leader of the Senate; one member to be appointed by the minority leader of the General Assembly; and one member to be appointed by the Chief Justice of the New Jersey Supreme Court. Of the members appointed by the Governor, at least two shall be appointed from a list of six willing nominees submitted by the chairman of the political party whose candidate for Governor received the second largest number of votes at the most recent

gubernatorial general election. The decisions of the Council shall be political and not judicial determinations.

(c) Notwithstanding anything in this paragraph to the contrary, the following categories of laws or rules or regulations issued pursuant to a law, shall not be considered unfunded mandates:

(1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements;

(2) those which are imposed on both government and non-government entities in the same or substantially similar circumstances;

(3) those which repeal, revise or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities;

(4) those which stem from failure to comply with previously enacted laws or rules or regulations issued pursuant to a law;

(5) those which implement the provisions of this Constitution; and

(6) laws which are enacted after a public hearing, held after public notice that unfunded mandates will be considered, for which a fiscal analysis is available at the time of the public hearing and which, in addition to complying with all other constitutional requirements with regard to the enactment of laws, are passed by 3/4 affirmative vote of the members of each House of the Legislature.

Adopted November 7, 1995.
Effective December 7, 1995.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 30

WHEREAS, Tuition vouchers have been proposed to achieve education reform by providing an incentive to schools to improve and by allowing parents greater freedom to choose the schools that meet their children's needs; and

WHEREAS, I have proposed a limited tuition voucher pilot program to meet the legitimate needs of parents and students through increased flexibility; and

WHEREAS, The legislative leadership in both Houses has indicated a desire for further study and deliberation on this important issue; and

WHEREAS, The legislation to accomplish these objectives should be proposed with the active participation of concerned parties on a bipartisan basis;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Advisory Panel on School Vouchers. The Advisory Panel shall be representative of a diversity of views and shall consist of fifteen (15) members as follows:

a. Seven (7) members, including the chair and vice chair, appointed by the Governor, no more than four of whom shall be of the same political party;

b. The Attorney General or her designee and the Commissioner of Education or his designee shall serve as ex officio members;

c. Three (3) members appointed by the President of the Senate, no more than two of whom shall be of the same political party;

d. Three (3) members appointed by the Speaker of the General Assembly, no more than two of whom shall be of the same political party.

2. The Advisory Panel shall assist the Governor and Legislature in proposing legislation to implement a tuition school voucher program based upon the objectives set forth below.

3. The proposed legislation should address the following objectives:

a. The proposal should be limited in scope and viewed as a pilot program so as to determine the feasibility and impact of expanding the program statewide;

b. The proposal must recognize the fiscal constraints of the State and be consistent with budgetary limitations; and

c. The proposal must include a mechanism and criteria to adequately and impartially evaluate the pilot program.

4. The Advisory Panel should also examine the fiscal, legal and administrative issues that may arise concerning implementation of the pilot program.

5. The Advisory Panel shall present its recommendations and proposed legislation no later than one year from the date of this Order to allow adoption and implementation for the 1996 school year.

6. The Advisory Panel is authorized to call upon any department, office or agency of State government to provide such information, personnel and assistance as deemed necessary to discharge its responsibilities under this Order. Each department, officer, division and agency of this State is hereby required to cooperate with the Advisory Panel and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order.

7. The Advisory Panel shall hold at least three (3) public hearings as it discharges its responsibilities under this Order.

8. This Order shall take effect immediately.

Issued January 10, 1995.

EXECUTIVE ORDER NO. 31

WHEREAS, It is fitting and appropriate to honor the memory and mourn the passing of Senator Walter Rand; and

WHEREAS, Born in Philadelphia, Pennsylvania, Senator Rand tirelessly devoted his life to serving his community and his State; and

WHEREAS, Senator Rand served the Camden Board of Education with distinction, first as an Assistant Secretary and Purchasing Agent and then as an elected member from 1971 to 1974; and

WHEREAS, In 1975, Senator Rand was elected to the General Assembly serving there until 1981, whereupon he was elected to the Senate; and

WHEREAS, Senator Rand served as Chairman of the Senate Transportation and Public Utilities Committee and was an expert on transportation issues; and

WHEREAS, Among Senator Rand's many accomplishments during his nearly 20-year tenure in the Legislature, he sponsored the law creating the Transportation Trust Fund and the law which led to the creation of the South Jersey Transportation Authority; and

WHEREAS, It is with deep sadness that we mourn the loss of Senator Rand and extend our sincerest sympathies to his family and friends;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, January 11, 1995 in recognition and mourning of the passing of Senator Walter Rand.

2. This Order shall take effect immediately.

Issued January 10, 1995.

EXECUTIVE ORDER NO. 32

WHEREAS, Executive Order No. 10, issued on July 13, 1982, established the Vacancy Review Board, consisting of the Commissioner of the Department of Personnel, the State Treasurer, and a representative from the Governor's Office; and

WHEREAS, In light of budgetary constraints, it is necessary to fully inventory and review all vacancies, including those created by resignation, transfer and disciplinary removal as well as retirement; and

WHEREAS, A more informed determination regarding the continued usefulness of a particular position can be made by the department in which the position has become available;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Vacancy Review Board is hereby eliminated.

2. Executive Order No. 10 (1982) is rescinded.

3. Each department shall assume the functions previously performed by the Vacancy Review Board, including a review of all positions that become available in that department to determine whether the positions should be refilled at the current level, downgraded, or left vacant.

4. This Order shall take effect immediately.

Issued February 23, 1995.

EXECUTIVE ORDER NO. 33

WHEREAS, Executive Order No. 21 was enacted to promote harmonious relations between the State and its employees while ensuring the efficient and continuous delivery of public services; and

WHEREAS, The goal of this Administration under Executive Order No. 21 is to encourage cooperation between the State and its employees by facilitating the exchange of information and ideas between the responsible parties; and

WHEREAS, Collective negotiations between the State and its employees concerning the terms and conditions of employment are about to commence; and

WHEREAS, It is the further goal of this Administration that an orderly, efficient and good faith process for conducting negotiations be established which preserves the rights of the State and its employees;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of the State of New Jersey, do hereby ORDER and DIRECT:

1. Executive Order No. 21 shall remain in full force and effect except as modified herein.

2. Paragraph 2(c) of Executive Order No. 21 is hereby rescinded and replaced by the following: The Council shall advise the Governor on employee relations policy, and related matters involving State employees.

3. Paragraph 3 of Executive Order No. 21 is hereby rescinded and replaced by the following: The Council is authorized to hire such outside consultants and counsel as deemed necessary to fulfill its mandate pursuant to this Order.

4. Paragraph 7 of Executive Order No. 21 is hereby rescinded and replaced by the following: The Office of Employee Relations is hereby transferred from the Department of Personnel to the Office of the Governor and shall report to the Governor's Chief of Staff (the "Chief of Staff"). Compensation for employees of the Office of Employee Relations shall be consistent with guidelines or regulations established by the Department of Personnel.

5. Paragraph 8(c) and (d) of Executive Order No. 21 is hereby rescinded and replaced by the following: (c) providing support staff

to the Chief of Staff or labor counsel and rendering such reports to labor counsel as the labor counsel may direct or the Chief of Staff determines; and (d) offering recommendations to the Governor's Employee Relations Policy Council concerning employee relations and related matters involving State employees.

6. Paragraph 9 of Executive Order No. 21 is deleted and replaced by the following: The Chief of Staff shall serve, through labor counsel, as the Governor's agent in conducting collective negotiations with employee organizations.

7. Paragraph 10(a) of Executive Order No. 21 is hereby rescinded and replaced by the following: All appropriations, personnel, records and property associated with the Office of Employee Relations shall be reallocated within the Office of the Governor in such a manner as the Chief of Staff deems appropriate in order to maximize efficiency, service and cost-effectiveness.

8. Paragraph 10(c) of Executive Order No. 21 is hereby rescinded and replaced by the following: Except as herein otherwise provided and in accordance with Title 11A, Civil Service of the New Jersey Statutes, allocation of the Office of Employee Relations to the Office of the Governor shall not alter or change the term, tenure of office, rights, obligations, duties or responsibilities otherwise pertaining to the Office of Employee Relations.

9. This Order shall take effect immediately.

Issued March 6, 1995.

EXECUTIVE ORDER NO. 34

WHEREAS, Governor Kean established the Governor's Advisory Committee on Public/Private Volunteer Partnerships ("Advisory Committee"); and

WHEREAS, Executive Order No. 71 of Governor Florio renamed the Advisory Committee the Governor's Advisory Council on Volunteerism and Community Service ("Advisory Council"); and

WHEREAS, Thousands of citizens of the State from every age group and from all walks of life continue to volunteer countless hours of service in order to help others in their communities; and

WHEREAS, The promotion, support, and recognition of volunteerism in New Jersey is best achieved by the activities of the Advisory Council; and

WHEREAS, The National Service Trust Act of 1993 encourages Americans to join and serve together for the common good; and

WHEREAS, The notion "New Jersey - One Family" reflects a sense of common purpose among the State's diverse communities; and

WHEREAS, Encouraging young people to be involved in volunteerism and community service will develop an underutilized source of leadership in communities throughout the State;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Advisory Council shall consist of not more than 42 members. The Commissioners of the Departments of Commerce, Community Affairs, Education, Health, Human Services and Labor, the Attorney General, the Chairperson of the State Employment and Training Commission, the Executive Director of the Administrative Office of the Courts and the Executive Director of the New Jersey Commission on Community Service, or their designees, as well as one representative of a federal volunteer program, shall serve on the Advisory Council as ex officio members.

2. The public members of the Advisory Council shall be appointed by the Governor and shall consist of representatives from volunteer associations or organizations, youth-serving organizations, the non-profit sector and the State's business and education community. The Governor shall designate a Chairperson from among the public members of the Advisory Council.

3. Members of the Advisory Council shall serve without compensation. Public members shall serve for terms of three years

and, upon a recommendation by the Executive Director of the Advisory Council, can be removed by the Governor for cause. Advisory Council vacancies shall be filled by the Governor for the remainder of the unexpired term.

4. The Advisory Council shall:

a. encourage the expansion of volunteerism and community service in the State by advising and supporting the Governor's Office of Volunteerism;

b. identify and prioritize community needs and identify the resources to meet those needs through volunteerism and community service;

c. recognize and reward successful examples of community partnerships, service projects, and volunteerism;

d. involve New Jersey's youth, senior citizens, businesses, individuals and groups in efforts to work together to strengthen and meet the needs of the State's communities through volunteerism and community service; and

e. advise the Governor on volunteerism and community service issues.

5. The Advisory Council shall set its own operating procedures and meeting schedule, except that it shall meet not less than four times each year, and one of these meetings shall give the public an opportunity to express views concerning volunteerism and community service.

6. The Advisory Council is authorized to solicit funding from private entities through donations supporting its activities as described in this Executive Order.

7. The Governor's Youth Advisory Council ("Youth Advisory Council") is hereby established as an ancillary body of the Advisory Council.

8. The Youth Advisory Council shall:

a. serve as an advisory body to the Advisory Council to identify and prioritize urgent social problems that can be addressed by youth through volunteerism and community service;

b. serve as an advocate for youth services throughout the State on behalf of the Governor and the Advisory Council;

c. recommend service programs to the Advisory Council; and

d. present recommendations to the Advisory Council for promoting youth service and related programs at the end of each of its terms.

9. The Youth Advisory Council shall be comprised of twenty-five members appointed by the Governor. The members shall serve for terms of three years, except that of those first appointed, eight shall serve for a term of one year, eight shall serve for a term of two years and the remainder shall serve for a term of three years.

10. The Youth Advisory Council shall include:
a. youth between the ages of 12 to 22 years old;
b. youth with demonstrated leadership abilities in the area of community service; and
c. youth reflecting the diversity of the State.

11. The Governor shall select annually a member of the Youth Advisory Council to serve as its Chairperson.

12. The Youth Advisory Council shall annually select two of its members to serve as public members on the Advisory Council.

13. The Youth Advisory Council shall set its own operating procedures and meeting schedule, except that it shall meet not less than three times per year.

14. The Advisory Council and the Youth Advisory Council shall receive administrative support from the Governor's Office of Volunteerism, but shall not obligate any funds of that office or of any other department, office, division or agency of the State.

15. The Governor, upon a recommendation by the Executive Director of the Advisory Council, may remove a member of the Youth Advisory Council for cause.

16. This Order shall take effect immediately.

Issued April 10, 1995.

EXECUTIVE ORDER NO. 35

WHEREAS, Reorganization Plan No. 002-1995 (hereinafter "the Plan") was submitted to the Senate and General Assembly on March 13, 1995; and

WHEREAS, Paragraph 2 of the Plan provides for the transfer of Division of Motor Vehicles records, property, employees, as well as for the transfer of the unexpended balance of funds appropriated or otherwise available to the Division of Motor Vehicles from the Department of Law and Public Safety to the Department of Transportation pursuant to the "State Agency Transfer Act," P.L. 1971, c. 375 (C.52:14D-1 et seq.); and

WHEREAS, The Plan shall become effective in 60 days on May 12, 1995, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor the Plan; and

WHEREAS, Paragraph 7 of the Plan also provides that it shall become effective on a date later than May 12, 1995, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by an Executive Order; and

WHEREAS, The administrative burden on both the Department of Law and Public Safety and the Department of Transportation in implementing the Plan will be greatly diminished by delaying the effective date of the Plan until the commencement of the new fiscal year; and

WHEREAS, Coordinating the effective date of the Plan with the commencement of the new fiscal year and with the effective date of related personnel action in the affected departments will promote the prompt, efficient and effective implementation of the Plan, in the best interests of the State; and

WHEREAS, I conclude that an effective date later than May 12, 1995 is necessary for the orderly and effective implementation of the Plan;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby ORDER and DIRECT:

1. Reorganization Plan No. 002-1995, unless disapproved by the Legislature by May 12, 1995, shall be effective on July 22, 1995.

2. This Order shall take effect immediately.

Issued May 8, 1995.

EXECUTIVE ORDER NO. 36

WHEREAS, New Jersey's skilled workforce is our strength as we compete in the world economy; and

WHEREAS, Investments in training and education foster high skill/high wage jobs, provide economic leadership for the State, and offer a better standard of living for our citizens; and

WHEREAS, To remain competitive, New Jersey must develop a State-based and locally delivered strategy for an integrated education and job training system based on current and future State and local area labor market demands; and

WHEREAS, The New Jersey Departments of Labor and Education, in conjunction with other State agencies, have been charged with the responsibility to implement a coordinated workforce readiness system consistent with the design constructed by the State Employment and Training Commission ("SETC") in A Unified Plan for New Jersey's Workforce Readiness System (the "Plan"); and

WHEREAS, A coordinated workforce readiness system, in concert with the State's overall economic development strategy, would guide federal, State, and local resources in a manner that promotes a high quality, globally competitive workforce; and

WHEREAS, Pursuant to N.J.S.A.34:15C-15e(7), a coordinated workforce readiness system can be achieved through the expansion of the State's local Private Industry Councils ("PICs") into broad-based Workforce Investment Boards with responsibilities consistent with the Plan;

NOW THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Within sixty days of the issuance of this Order, current county and multi-county PICs, in cooperation with their chief elected local officials, shall develop plans to assume the additional responsibili-

ties as provided under this Order, and to implement those additional responsibilities through a Workforce Investment Board.

2. In areas where more than one PIC serves a county, those PICs shall work cooperatively to develop a single county-based Workforce Investment Board to meet the needs of the entire county workforce population.

3. Workforce Investment Boards shall have all of the rights, duties, and responsibilities now held by any of their constituent PICs as well as all authority granted pursuant to this Order.

4. Workforce Investment Board membership shall be consistent with the provisions of N.J.S.A.34:15C-15(b). The SETC shall establish additional guidelines concerning the composition of the Workforce Investment Boards to ensure that membership is broad-based and includes local business, education, labor, training, and social services representatives.

5. The Workforce Investment Boards shall maintain statutory responsibilities under the federal Job Training Partnership Act and N.J.S.A.34:15C-15, however, their emphasis shall be on the coordination of all workforce readiness programs in their local areas.

6. The Workforce Investment Boards shall:

(a) assess the labor market and develop a local strategic plan to optimize federal, State and local workforce readiness resources within their boundaries;

(b) address the concerns of traditionally marginalized populations, such as women and minorities, who constitute the majority of new entrants to the workforce by developing specific plans and activities to serve these populations;

(c) act to influence both program management and resource allocation by analyzing local needs and opportunities and coordinating federal, State, and local resources to achieve defined goals;

(d) design a consolidated workforce investment plan to replace the current separate plans developed for each applicable federal, State and locally funded program; and

(e) establish a marketing and development strategy to ensure the local community is aware of the purpose and functions of the Workforce Investment Board.

7. The SETC immediately shall develop a Statewide workforce investment plan to be incorporated into the Plan, which, together with periodic updates, will be used as a guide for Workforce Investment Boards as they develop and improve local plans.

8. Each workforce investment plan shall include:

(a) the development of an integrated service delivery system to serve the needs of the local population;

(b) the establishment of a School-to-Work system;

(c) an assessment of community needs with a special emphasis on urban areas and special needs school districts served by the Workforce Investment Board;

(d) a coordination of local resources in support of welfare reform efforts to move recipients of public assistance into work activities;

(e) an analysis of the available resources;

(f) a comprehensive plan for the utilization of available resources to meet the community's workforce readiness needs;

(g) an evaluation of any workforce readiness system currently in place;

(h) an oversight and review procedure for implementation of the plan; and

(i) other components as established by the SETC.

9. The SETC shall review the workforce investment plans to recommend improvements and suggest methods of coordinating with the other local plans. The workforce investment plans, along with the SETC comments, shall be forwarded to the Commissioner of Labor, who will ensure that the plans comply with State and federal law, and are consistent with the Plan.

10. Except where specifically otherwise directed, the Commissioner of Labor shall exercise the authority of the Governor to:

(a) request, accept and direct the allocation of federal and State funds related to workforce readiness programs in the State of New Jersey;

(b) assure that the State is in compliance with the provisions of all federal laws governing the workforce readiness system and provide for corrective actions when necessary;

(c) resolve disputes arising under the workforce readiness programs; and

(d) carry out such other related responsibilities as specified or implied under the workforce readiness laws.

11. The Commissioner of Labor shall coordinate activities with affected departments, which will maintain statutory authority over programs within their jurisdiction.

12. The Department of Labor, in conjunction with the SETC and other affected State departments, shall coordinate the development of an integrated service delivery system for workforce development, which shall be incorporated into the Plan. The delivery system must provide for common intake and assessment for those utilizing workforce readiness programs, uniform administrative procedures and performance standards, and compatible technology.

13. The Departments of Commerce and Economic Development, Community Affairs, Education, Human Services, and Labor shall direct workforce readiness resources in a manner consistent with the development of a unified workforce readiness system. Priority shall be given to those areas in which broadly inclusive Workforce Investment Boards are developing coordinated strategies for the delivery of services to the public consistent with paragraphs 4 and 5 of this Order.

14. Administrative funding for the workforce readiness system shall be obtained from all workforce readiness programs. Funding ratios for the allocation of administrative funding shall be established cooperatively by the departments which fund or administer workforce development programs. The Commissioner of Labor, in consultation with the SETC, shall set criteria and standards for any Workforce Investment Board administrators hired with these administrative resources.

15. The Chairman of the SETC shall continue to determine the budget necessary to carry out the SETC's responsibilities under the federal Job Training Partnership Act and N.J.S.A.34:15C-1 et seq. Annual expenditures of an amount not to exceed twenty percent (20%) of the State's five percent (5%) resources available to the Governor under the federal Job Training Partnership Act are hereby authorized.

16. The SETC shall develop Statewide guidelines for the implementation of this Order within thirty days of the issuance hereof.

17. The Commissioner of Labor shall exercise all administrative authority necessary to effect the Statewide expansion of PICs into Workforce Investment Boards by no later than July 1, 1996.

18. Executive Order 107 (Florio 1993) is hereby rescinded.

19. This Order shall take effect immediately.

Issued May 12, 1995.

EXECUTIVE ORDER NO. 37

WHEREAS, On April 25, 1988, in commemoration of the 40th anniversary of the founding of the State of Israel, the State of New Jersey entered into a Sister State Agreement with Israel as a symbol of the potential for cooperation that exists between our two states; and

WHEREAS, This Agreement calls for the development of trade and cultural and educational exchanges, in addition to encouraging the development of capital investment and joint business ventures; and

WHEREAS, On May 31, 1989, the State of New Jersey established the New Jersey-Israel Commission by Executive Order No. 208 of Governor Kean to enhance New Jersey's ability to implement the stated goals of this Agreement; and

WHEREAS, The Commission was continued by Executive Order Nos. 35 and 90 of Governor Florio through and including May 31, 1995; and

WHEREAS, The Commission has effectively fostered a spirit of cooperation between the citizens of the State of Israel and the citizens of the State of New Jersey that should continue in order to further the goals of the Agreement; and

WHEREAS, Modification of the structure and membership of the Commission has been recommended;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby ORDER and DIRECT:

1. The New Jersey-Israel Commission shall continue in existence through and including May 31, 1997.

2. The Commission subcommittee on Agriculture and Natural Resources created pursuant to Executive Order No. 35 (Florio), shall be discontinued.

3. The Executive Committee of the Commission shall be comprised of the two chairpersons of the Commission appointed by the Governor, the four chairpersons of the Commission's four subcommittees, and four at-large members. The four subcommittee chairpersons and four at-large members shall be appointed by the Commission chairpersons.

4. The Commission is hereby authorized to solicit and receive financial and in-kind contributions from private organizations in furtherance of its purposes set forth in this Order.

5. All other provisions of Executive Order No. 208 of Governor Kean and Executive Order Nos. 35 and 90 of Governor Florio which are not inconsistent with the foregoing shall remain in full force and effect.

6. This Order shall take effect immediately.

Issued June 1, 1995.

EXECUTIVE ORDER NO. 38

WHEREAS, The New Jersey Economic Master Plan Commission (the "Commission"), created pursuant to Executive Order No. 1, recommended the creation of a private/public partnership to be known as Prosperity New Jersey to serve as an umbrella organization which would help foster, promote and strengthen economic activity, job creation and the overall business climate in New Jersey; and

WHEREAS, The Commission recommended that Prosperity New Jersey's mission should be to create, develop and implement a shared vision to move New Jersey to the forefront of the national and international economies; and

WHEREAS, Prosperity New Jersey should be formed to carry out the mission recommended by the Commission;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established a commission to be known as Prosperity New Jersey.

2. Prosperity New Jersey shall consist of up to twenty-seven (27) members appointed by the Governor, including the Governor's Chief of Policy and Planning and the Commissioners of the Departments of Commerce and Economic Development and Environmental Protection. The remaining members shall be public members who shall represent the various sectors of the economy and geographic areas of the State, including representatives of business, labor, environmental, academic and other non-governmental organizations. Two members of Prosperity New Jersey shall serve as co-chairs; one co-chair shall be a representative of business and the other shall be the Commissioner of the Department of Commerce and Economic Development.

3. Prosperity New Jersey shall create, develop, refine and implement strategic plans to continually move New Jersey to the forefront of the national and international economies by fostering, promoting and improving economic activity, job creation and the overall business climate in New Jersey.

4. Prosperity New Jersey shall meet on a quarterly basis and shall establish an executive committee and various private/public partnerships which shall meet bimonthly, or more often, if needed, to conduct their business and execute their respective missions.

5. Prosperity New Jersey is hereby authorized to hire an executive director, consultants and other professionals, subject to an appropriation by the Legislature, and to call on the Department of

Commerce and Economic Development to supply it with such data and other information, personnel or assistance as Prosperity New Jersey deems necessary to discharge its duties under this Order and to assure appropriate integration with State initiatives. The Department of Commerce and Economic Development is hereby directed, to the extent not inconsistent with law and within budgetary constraints, to cooperate with Prosperity New Jersey and to furnish it with such information, personnel and assistance as are necessary to accomplish the purposes of this Order. In order to more rapidly facilitate the commencement of Prosperity New Jersey's activities, the co-chairs of Prosperity New Jersey are hereby authorized to hire an acting executive director until such time as an executive director shall be hired by the full membership of Prosperity New Jersey.

6. Prosperity New Jersey is hereby authorized to solicit and receive financial and in-kind contributions from private organizations in furtherance of its purposes set forth in this Order.

7. As part of its work, Prosperity New Jersey shall study and report to the Governor on the appropriate vehicle for it to continue to carry out its mission in the future, including the advisability of incorporating Prosperity New Jersey as a tax exempt organization that is eligible to receive tax deductible contributions.

8. This Order shall take effect immediately.

Issued June 15, 1995.

EXECUTIVE ORDER NO. 39

WHEREAS, There are several bills currently pending before the Legislature seeking to reform different aspects of the present parole system; and

WHEREAS, The problems of the parole system command that they be addressed in a comprehensive and/or uniform manner; and

WHEREAS, In consultation with the Senate President and the Speaker of the General Assembly, I conclude that the parole system must be thoroughly reviewed before legislation is enacted to reform it;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT as follows:

1. There is hereby established a commission to be known as the Study Commission on Parole (hereby referred to as the "Commission"). The Commission shall consist of 15 members to be appointed as follows: three public members appointed by the President of the Senate, no more than two of whom shall be of the same political party; three public members appointed by the Speaker of the General Assembly, no more than two of whom shall be of the same political party; nine members to be appointed by the Governor including as follows: the Commissioner of the Department of Corrections, the Attorney General, two County Prosecutors, the Director of the Administrative Office of the Courts, one member of the State Parole Board, and one crime victim or concerned citizen. The chairperson and vice-chairperson of the Commission shall also be appointed by the Governor. The Commission shall undertake a thorough study of the parole system and shall make recommendations on how to improve the parole system.

The Commission shall meet as soon as practicable after the appointment of its members. Vacancies in the membership shall be filled in the same manner as the original appointments were made.

2. The Commission shall organize as soon as possible after the appointment of its members. The chairperson shall appoint a secretary who need not be a member of the commission.

3. 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, officer, 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.

4. The Commission shall file a report with the Governor and the Legislature with recommendations for any legislative bills within one year after the first meeting of the Commission.

5. This Order shall take effect immediately.

Issued July 25, 1995.

EXECUTIVE ORDER NO. 40

WHEREAS, On May 27, 1986, by Executive Order No. 138, the Governor's Council on New Jersey Outdoors was created to continue the work of New Jersey's Conference on Recreational Resources; and

WHEREAS, On October 18, 1988, by Executive Order No. 196, the Governor's Council on New Jersey Outdoors was established as a permanent body consistent with the recommendations of citizens made during the Council's public hearing process; and

WHEREAS, The study and identification of the open space and recreational needs of the State continues to be an essential part of the planning process to meet these needs; and

WHEREAS, In particular, the study and identification of current and future sources of funding, with special emphasis on identifying stable sources of funding for the future, is an area requiring the immediate attention of the Council and the State in order to ensure that the State's open space and recreational needs are met in the most effective and efficient means possible;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Council known as the Governor's Council on New Jersey Outdoors (hereinafter referred to as the "Council") is hereby continued to consist of nineteen (19) members to be appointed by and serve at the pleasure of the Governor.

2. The makeup of the Council shall be as follows:

a. one (1) representative shall be from an urban municipality;

b. one (1) representative who serves in government at the county level;

c. one (1) representative from the New Jersey Recreation and Parks Association;

d two (2) public members;

e. four (4) members of the Legislature: two Senators, one of each political party; and two Assemblypersons, one of each political

party, appointed by the Governor upon the recommendation of the President of the Senate and the Speaker of the General Assembly;

f. ten (10) representatives of the various civic and social organizations, including representatives with a background in finance, business and industry, health and medicine, arts and culture, the environment, coastal issues, handicapped affairs, and recreational sports.

3. All members shall serve, without compensation, at the pleasure of the Governor. Council vacancies shall be filled by the Governor as necessary.

4. The Governor shall select from among the members of the Council a Chairperson and two Vice-Chairpersons, who shall have all the powers and duties of the Chairperson.

5. The Council shall be empowered to conduct public hearings and to accept public testimony to continue with its work, particularly to study the current and future open space, urban recreation, recreation, and natural resource preservation needs of the citizens of the State of New Jersey, and to study current and future sources of funding to meet these needs, with particular emphasis on identifying stable sources of funding for the future.

6. The Council shall prepare and submit to the Governor findings and recommendations it deems necessary for providing high quality open space and recreation resources for the citizens of the State of New Jersey and, in particular, as soon as is practicable, and in no case later than fifteen (15) months after the effective date of this Order, the Council shall prepare and submit a report evaluating current sources of funding and providing findings and recommendations on future sources of funding, with special emphasis on identifying stable sources of funding.

7. The Council is authorized to call upon any department, office, division, or agency of this State to supply it with the data and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency is hereby directed, to the extent not inconsistent with law, to cooperate with the Council and to furnish it with such information, personnel, and assistance as is necessary to accomplish the purposes of this Order.

8. This Order shall take effect immediately.

Issued August 3, 1995.

EXECUTIVE ORDER NO. 41

WHEREAS, Northeastern New Jersey has suffered from unusually dry weather conditions in late 1994 and 1995; and

WHEREAS, During the past twelve-month period, precipitation throughout Northeastern New Jersey has been among the lowest on record; and

WHEREAS, On August 29, 1995, the New Jersey Department of Environmental Protection issued a drought warning for municipalities in all or portions of the Counties of Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union, serviced by United Water New Jersey, North Jersey District Water Supply Commission, the City of Jersey City, the City of Newark, the Passaic Valley Water Commission, and New Jersey - American Water Company/Northern Division, due to the precipitation deficit and depleted reservoir levels; in particular, the reservoir systems of United Water New Jersey and the North Jersey District Water Supply Commission have been seriously depleted; and

WHEREAS, Voluntary efforts to curtail nonessential consumption of water resources and the transfer of water among these Northeastern reservoir systems have not succeeded in maintaining adequate levels of existing water supplies; and

WHEREAS, The consumption of water in Northeastern New Jersey must be reduced in order to preserve an adequate and dependable supply of water for this region; and

WHEREAS, The impending water shortage resulting from the natural cause of a prolonged drought endangers the health, safety and resources of the residents and industry of Northeastern New Jersey; and

WHEREAS, The full cooperation of every person in the affected region, including every business, State agency and political subdivision, is urgently needed in order to avert more severe restrictions on water usage, including measures requiring curtailment of production and operation in industrial and

commercial establishments, and the adverse economic impacts such restrictions may impose on the State and local level; and

WHEREAS, It is essential that steps be taken immediately to ensure the maximum conservation of all water resources in the affected areas and to provide for the equitable distribution of the existing water supply; and

WHEREAS, The Commissioner of Environmental Protection and the Drought Coordinator, with the assistance of the Water Emergency Task Force, have the authority pursuant to N.J.S.A.58:1A-1 et seq. and N.J.A.C.7:19-1 et seq., to adopt such rules, regulations, orders and directives as deemed necessary to help alleviate a water emergency;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State and in accordance with the findings of Robert C. Shinn, Jr., Commissioner of Environmental Protection, made pursuant to the Water Emergency Rules, set forth at N.J.A.C.7:19-1 et seq., do hereby declare a state of water emergency in those municipalities in the counties of Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union, as specified in Attachment "A" annexed hereto and do hereby DECLARE, ORDER AND DIRECT:

1. I declare that a state of water emergency exists in the area described by reason of the facts and circumstances set forth above.

2. I invoke such emergency powers as are conferred upon me by the Water Supply Management Act, N.J.S.A.58:1A-1 et seq., and the Disaster Control Act, N.J.S.A. App. A:9-30 et seq.

3. The Commissioner of Environmental Protection, the Water Emergency Task Force and the Drought Coordinator are directed, pursuant to N.J.S.A.58:1A-1 et seq. and N.J.A.C.7:19-1 et seq., and other relevant laws, to take whatever steps are necessary and proper to alleviate the water emergency and to effectuate this Order.

4. It shall be the duty of every person, which includes every business, State agency and political subdivision, in the water emergency area, to fully cooperate in all matters concerning this water emergency.

5. All persons in non-emergency areas are urged to use water wisely, and to comply with voluntary or mandatory restrictions either advised or imposed by the Department of Environmental Protection, applicable municipalities or water purveyors servicing their areas.

6. Any person who shall violate any of the provisions of this Order or shall impede or interfere with any action ordered or taken pursuant to this Order shall be subject to the penalties provided by law under N.J.S.A.58:1A-1 et seq., N.J.S.A.App. A:9-49 et seq., and N.J.A.C.7:19-1 et seq.

7. This Order shall remain in effect until the Governor declares by a subsequent Order that a state of water emergency no longer exists for the water emergency area designated by this Order.

8. This Order shall take effect immediately.

Issued September 13, 1995.

EXECUTIVE ORDER NO. 42

WHEREAS, The first game of baseball, as we know it, was played at the Elysian Fields in Hoboken, New Jersey on June 19, 1846; and

WHEREAS, In April 1946, Jackie Robinson was the first African-American to play as a member of the Montreal Royals in a game against the Jersey City Giants in Roosevelt Stadium, Jersey City, New Jersey, marking the beginning of racial integration of organized baseball; and

WHEREAS, 1996 will mark both the 150th anniversary of the first game of baseball and the 50th anniversary of the end of the barrier to African-Americans in our National Pastime; and

WHEREAS, There is a need to commemorate such occurrences and to mark New Jersey's place in such sports history; and

WHEREAS, A New Jersey Sports History Commission can best serve to prepare for and mark these anniversaries;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the New Jersey Sports History Commission, hereinafter referred to as the Commission.

2. The Commission shall be established in, but not of, the New Jersey Department of Commerce and Economic Development.

3. The Commission shall consist of 12 members appointed by the Governor, including the Commissioner of the Department of Commerce and Economic Development who shall serve as the chair of the Commission.

4. The Commission shall plan and implement the State commemoration of the 150th anniversary of the first game of baseball and the 50th anniversary of the beginning of integration of organized baseball by Jackie Robinson.

5. The Commission is authorized to solicit and receive financial and in-kind contributions from private organizations in furtherance of its purposes set forth in this Order.

6. The Commission is authorized to call upon any department, office, division or agency of this State to supply it with data and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency is hereby directed, to the extent not inconsistent with law, to cooperate with the Commission and to furnish it with such information, personnel, and assistance as is necessary to accomplish the purposes of this Order.

7. This Order shall take effect immediately.

Issued September 21, 1995.

EXECUTIVE ORDER NO. 43

WHEREAS, Executive Order No. 41 was issued on September 13, 1995, for the purpose of declaring a state of water emergency for a portion of Northeastern New Jersey impacted by unusually dry weather conditions and dwindling surface water supplies; and

WHEREAS, The prolonged precipitation deficit and rapidly declining storage in regional surface water supplies potentially threatened the health, safety and general welfare of the public; and

WHEREAS, The water management measures implemented by the State, coupled with the mandatory and voluntary water conservation efforts undertaken by New Jersey's residents and businesses, enabled us to preserve our available water supplies; and

WHEREAS, Precipitation events produced above-normal rainfall in October, resulting in approximately 5.5 inches over the long-term average for the month; and

WHEREAS, The Commissioner of Environmental Protection on October 25, 1995 issued Drought Emergency Administrative Order No. 1995-3, thereby lifting the mandatory water use restrictions and requesting voluntary water conservation;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. A state of water emergency no longer exists in the State of New Jersey and Executive Order No. 41 which instituted a state of water emergency in all or portions of Bergen, Essex, Hudson, Morris, Passaic, Somerset and Union Counties is hereby terminated.

2. This Order shall take effect immediately.

Issued November 3, 1995.

EXECUTIVE ORDER NO. 44

I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. November 24, 1995, 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 24, 1995.

Issued November 9, 1995.

REORGANIZATION PLANS

(2547)

REORGANIZATION PLAN NO. 001-1995
A PLAN FOR THE TRANSFER AND REORGANIZATION OF THE NEW JERSEY CEMETERY BOARD WITHIN THE DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS

PLEASE TAKE NOTICE that on March 13, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No.001-1995 (the "Plan"), providing for the transfer and reorganization of the New Jersey Cemetery Board.

The Plan represents an ongoing effort to streamline and downsize the structure and functions 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

Under current law, two departments of the Executive Branch regulate the treatment and disposition of the remains of deceased persons. Pursuant to P.L.1952, c.340 (C.45:7-32 et seq.), as amended and supplemented, the State Board of Mortuary Science of New Jersey, within the Division of Consumer Affairs in the Department of Law and Public Safety, regulates the preparation of remains for burial or other disposition, including embalming and funeral directing. Pursuant to P.L.1971, c.333 (C.8A:1-1 et seq.), as amended and supplemented, the New Jersey Cemetery Board "Cemetery Board" in the Department of Banking, regulates all cemetery companies, except religious cemeteries. The Plan provides for the transfer of the Cemetery Board to the Division of Consumer Affairs in the Department of Law and Public Safety, which houses the majority of the State's other professional and occupational boards, and its reorganization to take advantage of the consolidated operations and other economies of scale already available within the Division of Consumer Affairs. As a consequence, the remains of deceased persons in New Jersey will be subject to regulation in a single department of the Executive Branch.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in section 2 of the Act and that each aspect will:

1. promote the better execution of the laws, the more effective management of the Executive Branch and of its agencies and functions, and the expeditious administration of the public business;

2. reduce expenditures and/or increase 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 agencies and functions of the Executive Branch as nearly as possible according to major purposes;

5. reduce the number of agencies by consolidating those having similar functions under a single head, and abolish such agencies or functions as are not necessary for the efficient conduct of the Executive Branch; and

6. eliminate overlapping and duplication of effort.

PROVISIONS OF THE REORGANIZATION PLAN

1.a. The Cemetery Board, created and allocated in the Department of Banking pursuant to P.L.1971, c.333 (C.8A:2-1), as amended by section 81 of P.L.1973, c.219, and its powers, functions and duties pursuant to P.L.1971, c.333 (C.8A:1-1 et seq.) are hereby continued and transferred to and into the Division of Consumer Affairs in the Department of Law and Public Safety, subject to the following allocations of said powers, functions and duties.

b. The Cemetery Board shall be subject to oversight by the Attorney General to the same extent as other professional and occupational boards in the Division of Consumer Affairs and to the provisions of statutes generally governing such professional and occupational boards including, but not limited to, the provisions of P.L.1971, c.60 (C.45:1-2.1 et seq.), as amended and supplemented, the provisions of P.L.1977, c.285 (C.45:1-2.5 et seq.), as amended and supplemented, P.L.1974, c.46 (C.45:1-3.1 et seq.), as amended and supplemented, the provisions of P.L.1978, c.73 (C.45:1-14 et seq.), as amended and supplemented, and the provisions of section 35 of P.L.1948, c.439 (C.52:17B-35), as amended and supplemented, except that the provisions of P.L.1971, c.333 (C.8A:2-1i), shall continued to apply to the Cemetery Board.

c. In compliance with the provisions of section 2b of P.L.1971, c.60 (C.45:1-2.2b), as amended and supplemented, the Governor shall appoint two additional public members to the Cemetery Board, with the advice and consent of the Senate. The Commissioner of Health, or the Commissioner's designee, shall continue as a member of the Cemetery Board in lieu of a member appointed pursuant to section 2c of P.L.1971, c.60 (C.45:1-2.2c). The memberships of the Attorney General and the Commissioner of Banking on the Cemetery Board are terminated.

d. The Cemetery Board shall be subject to the provisions of section 33 of P.L.1948, c.439 (C.52:17B-33) with respect to the appointment, employment or removal of its officers.

e. The position of executive director established by P.L.1971, c.333 (C.8A:2-1g), as amended and supplemented, and the Cemetery Board's authority to appoint the executive director are abolished and the term of office of the executive director incumbent at the time this Plan takes effect is terminated. The authority, pursuant to P.L.1971, c.333 (C.8A:2-1g), as amended and supplemented, to provide the immediate supervision of the work of the Board is continued and transferred to the Director of the Division of Consumer Affairs, to be exercised through such employee or employees as the Director of the Division of Consumer Affairs shall designate.

f. The Cemetery Board's authority, pursuant to P.L.1971, c.333 (C.8A:2-1h), as amended and supplemented, to appoint, employ and remove, subject to the provisions of Title 11A, Civil Service, such assistants and employees as may be necessary to carry out the provisions of P.L.1971, c.333 (C.8A:1-1 et seq.), as amended and supplemented, is continued and transferred to the Attorney General.

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 regulation of the disposition of the remains of deceased persons. Further, this plan will streamline State government for the benefit of all of New Jersey's citizens.

2. All records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the Cemetery Board are transferred to the Division of Consumer Affairs as necessary to perform the functions transferred to that Division under this Plan, as determined by the Attorney General.

3. Whenever, in P.L.1971, c.333 (C.8A:1-1 et seq.), or in any rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the Commissioner of Banking, the same shall mean and refer to the Attorney General, except that the Commissioner of Banking's membership on the Cemetery Board is terminated.

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 provisions of this Plan or the application thereof to any person, or circumstances, or the exercise of any power of 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 Plan was filed on March 13, 1995 with both Houses of the Legislature and with the Secretary of State for publication in the New Jersey Register. This Plan shall become effective in 60 days on May 12, 1995, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Plan, or at a date later than May 12, 1995, should the Governor establish such a later date for the effective date of this Plan, or any part hereof, by Executive Order.

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 13, 1995.
Effective May 12, 1995.

REORGANIZATION PLAN NO. 002-1995
A PLAN FOR THE TRANSFER AND REORGANIZATION OF THE DIVISION OF MOTOR VEHICLES WITHIN THE DEPARTMENT OF TRANSPORTATION

PLEASE TAKE NOTICE that on March 13, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No. 002-1995, (the "Plan"), to provide for the transfer and reorganization of the Division of Motor Vehicles ("DMV" or "Division") within the Department of Transportation ("DOT").

This Plan furthers an ongoing effort to streamline and downsize the structure and function of the Executive Branch in the interests of efficiency and economy without any diminution of public services, either qualitative or quantitative.

GENERAL STATEMENT OF PURPOSE

Pursuant to its present statutory authority, it is the duty of the DMV to regulate the use and registration of motor vehicles in this State. In fulfilling this duty, the DMV provides services to millions of New Jersey motor vehicle operators and owners, including licensing, titling, tracking of driver violations, and registration and vehicle inspection. Additionally, the DMV provides information and support to the law enforcement community and certain intergovernmental agencies, such as the Federal Highway Administration and American Association of Motor Vehicle Administrators.

In order to more efficiently manage and administer the State's motor vehicle services, this Plan provides for the reorganization of the Division and the transfer of the DMV from the Department of Law and Public Safety to the Department of Transportation. This transfer and reorganization will consolidate transportation and motor vehicle related activities and programs administered by the DOT and DMV, and will increase the ability of the State to coordinate and improve activities and programs related to highway safety, inspection and maintenance of vehicles, and transportation programs required to implement provisions of the Federal Clean Air Act.

Moreover, this transfer and reorganization will eliminate duplication of effort in administering various motor vehicle and transportation related activities and programs and will align and assign similar functions within one agency, thereby promoting overall efficiency and effectiveness.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in section 2 of the act and that each aspect will:

1. promote more effective management of the Executive Branch and of its agencies by grouping similar transportation and motor vehicle related functions and activities within one agency;

2. promote better and more efficient execution of the laws and the expeditious administration of the public business by consolidating and integrating within one agency similar regulatory functions, particularly the management and use of the State's highway system;

3. group, coordinate, and streamline regulatory functions in a more consistent and practical way;

4. reduce expenditures and promote economy to the fullest extent consistent with the efficient operations of the Executive Branch;

5. increase the efficiency of the operations of the Executive Branch to the fullest extent practicable; and

6. eliminate duplication and overlapping of effort by consolidating certain functions which will result in a savings of State funds.

PROVISIONS OF THE REORGANIZATION PLAN

1.a. The Division of Motor Vehicles, including the functions, powers, and duties assigned to it pursuant to P.L.1926, c.147, and provided by P.L.1921, c.208, as amended and supplemented, (C.39:2-1 et seq.), and allocated in the Department of Law and Public Safety, is hereby continued as the Division of Motor Vehicles and is transferred to the Department of Transportation, except as hereinafter provided.

b. The Director of the DMV shall be an Assistant Commissioner of the DOT and shall also retain the title of Director of the DMV. The Deputy Director of the DMV shall retain the title of Deputy Director of the DMV.

c. The authority set forth in P.L.1948, c.439 (C.52:17B-28), as it applies to the Division of Motor Vehicles, is continued and

transferred to the Commissioner of Transportation, subject to the exceptions set forth therein.

d. The DMV shall provide, at no cost, to the law enforcement community, as defined by the Attorney General, the Administrative Office of the Courts and any other agency designed by the Attorney General, the following:

(i) Direct on-line access and file transfer to the complete database contained in the DMV Comprehensive System, including all motor vehicle and vessel operator history, registration, violation and suspension information, with such access to be provided twenty-four hours a day, seven days a week.

(ii) Any and all motor vehicle and vessel related information, assistance and services, including those necessary for investigations, court or administrative proceedings and other confidential purposes, and to otherwise provide any other appropriate information or assistance requested by the Attorney General.

The Attorney General shall establish, in consultation with the Commissioner of Transportation, performance standards for: (1) the provision of the access, file transfer and information contained in the DMV Comprehensive System, and (2) the type of information, assistance and services to be provided by the DMV.

e. Because certain functions, powers and duties of the DMV are closely connected to the criminal, regulatory and administrative authority of the Attorney General, as Chief Law Enforcement Officer of the State and as head of the Department of Law and Public Safety, including, but not limited to, the theft of motor vehicles, the regulation of automobile sales and repair facilities, the provision of information to law enforcement agencies about the motor vehicle laws and regulations and the issuance of fictitious documents, for law enforcement purposes, the DOT and DMV shall continue to cooperate with the Attorney General in the investigation and prosecution of all civil and criminal matters and in the promulgation or implementation of any policies, rules or regulations related to criminal or administrative enforcement activities.

To that end, the Commissioner of Transportation shall seek approval from the Attorney General prior to: (1) engaging in any criminal investigatory or criminal or civil enforcement activity; (2) the issuance of any regulations relating to law enforcement or other civil enforcement activities; (3) the issuance of any legal advice to law enforcement agencies relating to motor vehicles or vessels: (4) implementing any procedures that may affect law enforcement; or (5) making any changes to the manner in which

the DMV Comprehensive System and network is managed, operated, maintained or secured or who performs any of those services and functions. In addition, the approval of the State Treasurer shall be required before any changes are made to the manner in which the DMV Comprehensive System and network is managed, operated, maintained or secured or who performs any of those services and functions. The Commissioner of Transportation shall also consult with the Attorney General on all policy statements, implementation of any policy, and any other matters which may relate to the Attorney General's authority as the Chief Law Enforcement Officer of the State and head of the Department of Law and Public Safety.

f. Nothing contained in this Plan shall be construed to diminish or modify the Attorney General's role as the Chief Law Enforcement Officer of the State or to otherwise affect the Attorney General's authority to establish any policies necessary for the uniform and efficient enforcement of the criminal laws and the administration of criminal justice throughout the State.

I find this Plan is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203 (C.52:14C-1 et seq.). In addition to the reasons set forth above, this Plan will help to ensure the close coordination and integration of the State's motor vehicle and transportation services, while also preserving and maintaining essential functions and powers of the Attorney General, as Chief Law Enforcement Officer of the State.

2. All employees who serve the DMV shall be employees of the Department of Transportation and shall be transferred to the DOT pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). Additionally, all records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the DMV, shall be transferred to the DOT pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

3. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the Division of Motor Vehicles within the Department of Law and Public Safety or the Director thereof, the same shall mean and refer to the Division of Motor Vehicles within the Department of Transportation, or the Assistant Commissioner/Director of the Division thereof.

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 provisions 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 Plan was filed on March 13, 1995 with both Houses of the Legislature and the Secretary of State for publication in the New Jersey Register. This Plan shall become effective in 60 days, on May 12, 1995, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Plan, or at a date later than May 12, 1995, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this 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 13, 1995.
Effective July 22, 1995, see Executive Order No. 35.

REORGANIZATION PLAN NO. 003-1995
A PLAN FOR THE REORGANIZATION OF THE DIVISION OF DAIRY INDUSTRY AND THE DIVISION OF REGULATORY SERVICES WITHIN THE DEPARTMENT OF AGRICULTURE

PLEASE TAKE NOTICE that on March 13, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan,

No. 003-1995 (the "Plan"), to provide for the reorganization of the Division of Dairy Industry and the Division of Regulatory Services within the Department of Agriculture.

This plan represents an ongoing effort to streamline and downsize the structure and functions 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

Pursuant to its present statutory authority, the Department of Agriculture conducts development, regulatory, service promotion, and information programs in support of agriculture and agribusiness as well as natural and renewable resources associated with agriculture and open lands, for the benefit of all New Jersey citizens. Under current law, the Department of Agriculture consists of seven divisions, each headed by a division director.

The Division of Dairy Industry is responsible for fostering a stable and competitive dairy industry, including the regulation and enforcement of the production and distribution of fluid dairy products. In addition, the Division of Dairy Industry licenses dealers who purchase milk from New Jersey dairy farmers or who sell fluid dairy products to other dealers and to retail outlets. In order to be licensed, the dealers must post a bond with the Secretary of Agriculture conditioned upon the payment of all amounts due and owing to New Jersey dairy farmers.

Similarly, the Division of Regulatory Services licenses all brokers of perishable agricultural commodities. Brokers buy, on credit, perishable agricultural commodities from New Jersey farmers and subsequently sell them to third parties. In order to be a New Jersey licensed broker, a person must post a bond with the Secretary of Agriculture conditioned upon the payment of all amounts due and owing to New Jersey farmers. The Division of Regulatory Services also is responsible for the quality assurance of animal feeds, fertilizers, agricultural liming materials, and agricultural commodities grading and inspection.

The purpose of this Plan, in part, is to create a governmental structure that will foster the efficient implementation of integrated assistance to New Jersey farmers and the State's citizens. The Plan accomplishes this by consolidating the functions of the Division of Dairy Industry and the Division of Regulatory Services into a new division to be named the Division of Dairy and Commodity Regulation. The consolidation of the two divisions into a single division will reduce management and cross utilization of personnel without affecting essential services to New Jersey farmers, agribusiness, and consumers.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in section 2 of the act and that each aspect will:

1. promote more effective management of the Executive Branch and more efficient execution of the laws by consolidating similar functions within one agency;

2. group, coordinate and consolidate functions in a more consistent and practical manner according to major purposes;

3. reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive Branch;

4. increase the efficiency of the operations of the Executive Branch to the fullest extent practicable;

5. reduce the number of agencies by consolidating those having similar functions under a single head; and

6. eliminate duplication and overlapping of effort and, thereby, better utilize State resources.

PROVISIONS OF THE REORGANIZATION PLAN

1. a. The Division of Dairy Industry contained within the Department of Agriculture, including the functions, powers, and duties assigned to it pursuant to P.L.1916, c.268 (C.4:1-1 et seq.), as amended and supplemented, is hereby continued and transferred to a single division, which shall be named the Division of Dairy and Commodity Regulation.

b. The Division of Regulatory Services contained within the Department of Agriculture, including the functions, powers and duties assigned to it pursuant to P.L.1916, c.268 (C.4:1-1 et seq.), as amended and supplemented, is hereby continued and transferred to a single division, which shall be named the Division of Dairy and Commodity Regulation.

c. The Director of the Division of Regulatory Services shall become the Director of the Division of Dairy and Commodity Regulation. The Deputy Director of the Division of Regulatory Services shall become the Deputy Director of the Division of Dairy and Commodity Regulation.

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 promote the increased efficiency, coordination and functioning of the State's programs for the grading and inspection of perishable agricultural commodities; the licensing, testing and enforcement of agricultural chemicals; and the licensing and bonding of brokers of perishable agricultural commodities. Further, this Plan will enable the State to maintain a viable, competitive dairy industry and an ample supply of milk at fair prices to consumers, while providing a fair return to dairy farmers.

2. All employees who serve the Division of Dairy Industry and the Division of Regulatory Services shall be transferred to the Division of Dairy and Commodity Regulation pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). In addition, all records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the Division of Dairy Industry and the Division of Regulatory Services shall be transferred to the Division of Dairy and Commodity Regulation pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

3. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise thereunder, reference is made to the Division of Dairy Industry or the Division of Regulatory Services, the same shall mean and refer to the Division of Dairy and Commodity Regulation.

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 provisions 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 Plan was filed on March 13, 1995, with both Houses of the Legislature and with the Secretary of State for publication in the New Jersey Register. This Plan shall become effective in 60 days on May 12, 1995, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Plan, or at a date later than May 12, 1995, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this 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 13, 1995.
Effective May 12, 1995.

REORGANIZATION PLAN NO. 004-1995
A PLAN FOR THE TRANSFER AND REORGANIZATION OF THE HEALTH FACILITIES RATE SETTING PROGRAM WITHIN THE DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PLEASE TAKE NOTICE that on June 12, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No. 004-1995, (the "Plan"), to provide for the transfer and reorganization of the Health Facilities Rate Setting Program within the Department of Human Services, Division of Medical Assistance and Health Services.

The Plan represents an ongoing effort to streamline and downsize the structure and functions of the Executive Branch in the interests of efficiency and economy without diminution of any services to the public.

GENERAL STATEMENT OF PURPOSE

Pursuant to N.J.S.A.30:4D-1 et seq., the Department of Human Services, through the Division of Medical Assistance and Health Services, is the single State agency designated to administer the

provisions of the New Jersey Medical Assistance and Health Services Act. On July 1, 1977, pursuant to that statutory authority, the Department of Health Services entered into a Letter of Agreement with the Department of Health. The terms of the Letter of Agreement allocated to the Department of Health the responsibility to establish Medicaid rates of payment, subject to the approval of the Department of Human Services, for long-term care facilities that participate in the New Jersey Medicaid program. To accomplish this task, a long-term care rate setting unit was created within the Department of Health's Health Facilities Rate Setting Program. This plan provides for the transfer of the long-term facilities rate setting unit of the Department of Health's Health Facilities Rate Setting Program, and its incumbent functions and responsibilities, to the Department of Human Services, Division of Medical Assistance and Health Services.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in section 2 of the act and that each aspect will:

1. promote more effective management of the Executive Branch, more efficient execution of the laws and the expeditious administration of the public business by consolidating similar functions within one agency;

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; and

5. eliminate duplication and overlapping of effort and, thereby, better utilize State resources.

PROVISIONS OF THE REORGANIZATION PLAN

1. The long-term care facilities rate setting functions, powers and duties assigned to the Health Facilities Rate Setting Program contained within the Department of Health, pursuant to a Letter of Agreement dated July 1, 1977, are hereby continued and trans-

ferred to and into the Division of Medical Assistance and Health Services in the Department of Human Services.

I find this Plan is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203 (C.52:14C-1 et seq.). In addition to the reasons set forth above, this Plan will result in increased efficiency, due to economies of scale, thereby improving the delivery of services to the nursing home industry. Further, this Plan will streamline both the Medicaid reimbursement program and State government in general, for the benefit of all of New Jersey's citizens.

2. All employees who serve in the long-term care facilities unit of the Health Facilities Rate Setting Program within the Division of Health Care Systems Analysis shall be transferred to the Division of Medical Assistance and Health Services pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). In addition, all records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the long-term care facilities unit of the Health Facilities Rate Setting Program within the Division of Health Care Systems Analysis shall be transferred to the Division of Medical Assistance and Health Services pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

3. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the long-term care facilities unit of the Health Facilities Rate Setting Program within the Division of Health Care Systems Analysis of the Department of Health or the Director thereof, the same shall mean and refer to the Division of Medical Assistance and Health Services within the Department of Human Services, or the Director of the Division thereof.

4. All act 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 provisions of the Plan or the applications thereof to any person, or circumstances, or the exercise of any power or authority hereunder are held invalid or contrary to law, such hold-

ing 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 Plan was filed on June 12, 1995, with both Houses of the Legislature and with the Secretary of State for publication in the New Jersey Register. This Plan shall become effective in 60 days on August 11, 1995, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Plan, or at a date later than August 11, 1995, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this 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 June 12, 1995.
Effective August 11, 1995.

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